The Indian Contract Act, 1872

NATURE OF CONTRACT

Question No.1 **Nov 2018 (5 Marks)**

Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

Answer:

The modes of revocation of an offer as per the Indian Contract Act, 1872 are:

(i) By notice of revocation

(ii) By lapse of time:

The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely.

(iii) By non-fulfilment of condition precedent where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offer or for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.

(iv) By death or insanity

(v) By counter offer

(vi) By the non-acceptance of the offer according to the prescribed or usual mode

(vii) By subsequent illegality.

Question No.2 **Jan 2021 (7 Marks)**

Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.

Answer:

Definition of Acceptance:

In terms of Section 2(b) of the Indian Contract Act, "the term acceptance" is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Analysis of the above definition

1. When the person to whom proposal is made for example if A offers sell his car to t for to B 2,00,000. Here, proposal is made to B.

2. The person to whom proposal is made ie. B in the above example and signifies his consent on that proposal, then we can say that B has signified his consent on the proposal made by A.

3. When B has signified his consent on that proposal, we can say that the proposal has been accepted.

4. Accepted proposal becomes promise.

Legal Rules regarding a valid acceptance

(1) **Acceptance can be given only by the person to whom offer is made:**

In case of a specific offer, it can be accepted only by the person to whom it is made. [Boulton vs Jones (1857)] Case Law: Boulton vs Jones (1857)

Facts: Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boultan for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

In case of a general offer, it can be accepted by any person who has the knowledge of the offer [Carill vs Carbolic Smoke Ball Co. (1893)]

(2) **Acceptance must be absolute and unqualified:**

As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly instalments of £50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [Neale vs. Maret (1930) W. N. 189].

A offers to sell his house to B for 1,00,000/- B replied that, "I can pay ₹ 80.000 for it. The offer of "A" is rejected by "B" as the acceptance is not unqualified. B however changes his mind and is prepared to pay ₹1,00,000/-. This is also treated as counter offer and it is upto A whether to accept it or not. [Union of India v. Bahulal AIR 1968 Bombay 294].

Example: "A" enquires from "B", "Will you purchase my car for ₹2 lakhs?" If "B" replies "I" shall purchase your car for ₹2 lakhs, if you buy my motocycle for ₹50,000, here "B"

cannot be considered to have accepted the proposal. If on the other hand "B" agrees to purchase the car from "A" as per his proposal subject to availability of valid Registration Certificate/book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition.

Therefore, the acceptance in this case is unconditional.

[3] **The acceptance must be communicated:**

to conclude a contract between parties, the acceptance must be communicated in some perceptible forms. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples Brogden vs. Metropolitan Railway Co. (1877)

Facts: B a supplier, sent a draft agreement relating to the Supply of Coal to the Manager of Railway Co. viz, Metropolitian Railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

Where an offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto. (Bhagwandas v. Girdharial)

A mere variation in the language not involving any difference in substance would not make the acceptance ineffective. [Heyworth vs. Knight (1884) 144 ER 120].

Example: A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal

There is no contract as acceptance was not communicated to A.

(4) **Acceptance must be in the prescribed mode:**

Where the mode of acceptance is prescribed in the proposal, must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offer or informs the offeree that the acceptance is not according to me mode prescribed. But if the offer or fails to do

so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

(5) **Time:**

Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses. What is reasonable time is nowhere defined in the law and thus, would depend on facts and circumstances of the particular case.

Example: A offered to sell B 50 kgs of bananas at ₹500. B communicated the acceptance after four days. Such is not a valid contract as bananas being perishable items could not stay for a period of week Four days is not a reasonable time in this case.

Example: A offers B to sell his house at ₹10,00,000. B accepted the offer and communicated to A after 4 days. Held the contract is valid as four days can be considered as reasonable time in case of sell of house.

(6) **Mere silence is not acceptance:**

The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Case Law: Felthouse vs. Bendley (1882)

Facts: (Uncle) offered to buy his nephew's horse for £30 saying "if I hear no more about it I shall consider the horse mine at £30". The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of him property. Held, F could not succeed as his nephew had not communicated the acceptance to him.

Example: "A" subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also "A" continued to use the magazine but denied to pay the bills sent to him. "A" would be liable to pay as his continued use of the magazine was his acceptance of the offer.

(7) **Acceptance by conduct/implied Acceptance:**

Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

Example: when a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods, constitutes the offer, which has been accepted by the trades man subsequently by sending the goods. It is a case of acceptance by conduct.

Example: When a cobbler sits with a brush and polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

Question No.3 Jan 2021(7 Marks)

i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

ii) A shop-keeper displayed a pair of dress in the showroom and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack-up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

Answer:

(i) Parties must intend to create legal obligations: There must be an intention on the part of the parties in create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wile will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

(ii) The offer should be distinguished from an invitation to offer. An offer a definite and capable of converting an intention in to a contract. Whereas an invitation to an offer is

only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. It the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Question No.4 Jan2021(6 Marks)

Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reached to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

(i) On which date, the offer made by Mr. B will complete?
(ii) Discuss the validity of acceptance
(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together?

Answer:

(1) Offer made by Mr. B will be completed on 13 April, 2020. (when it comes to the knowledge of Mr. S)

(2) Here, acceptance is not valid as he revoked his acceptance by telegram before letter of acceptance reaches Mr. B.

(3) If Letter of acceptance and letter of recavation reaches together than two situation may arise.

(i) It will be decided on the basis of the letter which he reads first like if he reads acceptance than acceptance is valid and if revocation first than acceptance is revoked.

(ii) In absence of any such information revocation is absolute.

Question No.5 Dec 2022 (4Marks)

X agrees to pay Y ₹ 1,00,000/-, if Y kills Z. To pay Y, X borrows ₹ 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also refuses to repay the loan to W. Explain the validity of the contract.

(i) Between X and Y.
(ii) Between X and W.

Answer:

i) Between X and Y:

As per the provisions of Section 19 of the Indian Contract Act, 1872

(a) A contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(b) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.

(c) A person to whom money has been paid or anything delivered under coercion must repay or return it (Section 72)

In the given case X agrees to pay Y ₹1,00,000/-if Y kills Z. To pay Y, X borrowed 1,00,000 from W. who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also refuses to repay the loan to W

The contract between X and Y is a contract which in voidable at the option of Y because Y's consent is not free as it has been obtained by coercion.

(4) Between X and W:

As per the provisions of Section 23 of the Indian Contract Act, 1872: those agreements are void which have unlawful considerations. The consideration or object of an agreement is lawful, unless it is forbidden by law, or is of such a nature that, it permitted, it would defeat the. provisions of any law, or is fraudulent, or involves or implies, injury to the person or property of another, or the court regards it as immoral, or opposed to public policy.

In the present case, the consideration of the agreement between X and Y is to murder Z which is in itself an illegal and forbidden act and defeat the provisions of law and hence this agreement cannot be enforced by W due to illegality of the consideration.

Consideration

Question No. 1 May 2018 (5 Marks)

State the exceptions to the rule "An agreement without the consideration is void".

Answer:

The general rule is that an agreement without consideration is void. However, there are certain exceptions to this rule in the following cases, the agreement though made without consideration, will be valid and enforceable.

1. Natural love and affection:

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g. husband and wife) to each other is enforceable without consideration.

2. Compensation for past voluntary services:

A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, although it is without any consideration today.

3. Promise to pay time barred debt:

Where a promise in writing signed by the person making it or by his authorised agent ia made to pay a debt tamed by limitation it is valid and binding even though without consideration.

4. Agency:

No consideration is necessary to create an agency.

5. Completed Gifts:

In case of gifts the rule no consideration, no contract is not applicable.

6. Bailment:

No consideration required for this.

7. Charity:

If no one promises to undertake liability to contribute to charity, the contract shall be valid even though without consideration.

Question No. 2 Nov 2019 (7 Marks)

Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872?

Answer:

Section 2(d) of the Indian Contract Act. 1872 defines consideration s follows:

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

It is defined as "quid-pro-quo", i.e. "something in return". This something need not to be in terms of money, as stated, it is some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given suffered or undertaken by the other".

However, it must have some value in the eyes of law and must not be vague or illusory.

Legal Rules Regarding Considerations:

1. Consideration must none at the desire of the promisor: An act done at the desire of a third party is not a consideration.

2 Consideration may move from promisee or any other person: There can be a stranger to consideration but not a stranger to a contract.

3. Executed and Executory Consideration: When consideration consists of an act it is executed but when it consists of a promise it is executory.

4. Consideration may be past present or future. The words has "done or abstained from doing" are a recognition of the doctrine of past consideration.

5. Consideration need not be adequate: It need not be of any particular value, but it must be something.

6. Performance of what one is legally bound to perform, cannot be treated as consideration.

7. Consideration must be real and not illusory.

8. Consideration must not be unlawful, immoral or opposed to public policy.

Question No.3 Jan 2021 (5Marks)

The general rule is that an agreement without consideration la void Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872

Answer:

No consideration no contract: The general rule is that an agreement made without consideration is void (Section 25 of Indian Contract Act, 1872). In every valid contract, consideration is very important.

A contract may only be enforceable when consideration is their. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. In case of an agreement on account of natural love and affection:

An agreement on account of natural love and affection will be valid if it:

~Written

~Registered

~Based on Natural Love affection

~Parties stand in near relation with each other (ag husband and wife)

Example: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration. was valid.

2. Agency: In case of contract of agency the consideration is not required.

3. Bailment: In case of contract of bailment the consideration is not required

4. Completed gin: Completed off means a gift actually handed over. Thus, gifts actually made by a donor and accepted by the done are valid even without consideration.

Example: On A's birthday, B gives him a gold chain as birthday gift in this case B cannot demand back the chain on the ground that there was no consideration.

5. Charity: A mere promise for charity is void because it is without consideration. But if a person promises to contribute for charity and the promisee undertakes liability i.e. incur liability then the contract will be valid up to the extent of the subscription promised.
(Kadarnath V. Gorie Mohammad)

Note: In case of charity, the promises is liable to pay the amount of incurred liability but upto promised amount

6. Compensation for Past Voluntary Service: When a person has already voluntarily done something for the promisor then a promise to compensate either wholly or partly will be binding when:

(a) The services should have been done voluntarily (but not Involuntarily)

(b) The services should have been rendered for the promisor

(c) The promisor must be an existence at the time when services was rendered

(d) The promisor must have intended to compensate

Example: P finds R's purse and gives it to him. R promises to give P ₹1,000. This is a valid contract.

7. In case of Promise to Pay time barred debt: Time barred debt or a debt based by limitation refers to an amount which has remained unclaimed beyond a time period of 3 years.

A promise to pay time barred debt is valid if:

~It is in writing

&

~Signed by the person making promise or by his agent.

Example: A is indebted to C ₹ 6,000 but the debt is barred by the Limitation Act. A signs a written promise now to pay ₹ 5,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

Question No.4 June2022 (7Marks)

The general rule is that an agreement made without consideration a void State the exceptions of this general rule as per the Indian Contract Act 1872

Answer:

The general rule in that an agreement made without consideration is void. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement is valid even though it is made without consideration, yet it will be valid-

(1) Natural Love and Affection- A promise which is made out of natural love and affection is enforceable even though it is without consideration, if all the below stated conditions are satisfied:-

(i) It must be made out of natural love and affection between the parties.

(ii) Parties must stand in near relationship to each other.

(iii) It must be in writing.

(v) It must be registered under the Law. In other words, a written and registered agreement based on natural love and affection between the parties standing in near relation (e.g.: husband and wife) to each other, is enforceable even without consideration.

(2) Compensation for past voluntary services:

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor in enforceable even without consideration, if all the below stated conditions, are satisfied-

(i) The services should have been rendered voluntarily.

(ii) The services must have been rendered for the promisor.

(iii) Promisor must be in existence at the time when such services were rendered

(iv) Promisor must have intended to compensate the promisee.

3) Promise to pay Time Barred Debt-

A promise to pay a debt which is barred by imitation valid even without consideration, all the below stated conditions are satisfied:

(i) It must be made in writing.

(ii) It must be signed by the person making it or by his authorized agent.

(4) Contract of Agency: Consideration a not necessary to create an agency.

(5) Completed Gift:

(i) Nothing in this section shall affect the validity of gifts actually made in between donor and donee.

(ii) Completed gifs do not require any consideration

(iii) If a person transfers some property by a duly written and registered deed as a gift, he cannot claim back the property subsequently on the ground of lack of consideration.

(6) Contract of Bailment

(i) Consideration is not required to affect a contract of bailment.

(7) Promise to contribute to charity:

If a promisee undertakes the liability on the promise of the person to contribute to charity, these the contract shall be valid.

Question No. 5 Dec 2022 (7Marks)

Explain the following statements in the light of provisions of Indian Contract Act, 1872:

(i) "Agreements made out of love and affection are valid agreements."

(ii) "Promise to pay a time barred debt cannot be enforced."

Answer:

The general rule is that an agreement made without consideration is void (Sec. 25). In every valid contract consideration is very important. A contract may only be enforceable when there is adequate consideration is there. However, the Indian Contract Act contains certain exception to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

(i) "Agreements made out of love and affection are valid agreements"

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

A contract in writing, registered on account of natural love and affection between parties standing near relation to each other are the essential requirements for valid

contract though it is without consideration (Rajakhee Devi vs. Bhootnath). Hence, the given statement is correct.

(ii) "Promise to pay a time barred debt cannot be enforced".

Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a dets barred by limitation it is valid without consideration (Sec. 25 (3)).

Hence, the given statement is incorrect.

Question No.6 June 2019(4 Marks)

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th Oct 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th Oct 2018, purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Answer:

In India, consideration may proceed from the promisee or any other person who is not a party to the contract.

According to the definition of consideration as given in Section 2(d), when at the desire of the promisor, the promisee or any other person does something, such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to contract. [Chinnaya vs. Ramayya]

In the given case between defendant (Mr. Mohanlal) and plaintiff (Mr. Chotelal) the consideration has been furnished on behalf of the plaintiff (Mr. Chotelal) by his father (Mr. Sohanlal). Although, the plaintiff stranger to the consideration but since he was a party to the contract he could enforce the promise of the promisor, since under Indian law, consideration may be given by the promisee or anyone on his behalf vide Section (d) of Indian Contract Act.

Thus, consideration furnished by Mr. Sohanlal to Mr. Mohanlal constitutes sufficient consideration for the plaintiff (Mr. Chotelal) to sue the defendant on the promise. Held, Mr. Chotelal was entitled to a decree for the right to use that 1 acre of land.

Other Essential Elements of Valid Contract

Question No. 1 Nov 2020 (5 marks)

Enumerate the difference between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872.

Answer:

	B.O.D.	Contracts of Insurance	Wagering Agreement
(a)	Meaning	It is a contract to indemnity the loss	It is a promise to pay money or moneys worth on the happening or non-happening of an uncertain event.
(b)	Consideration	The crux of insurance contract is the mutual consideration	There is no consideration between the two parties. There is just gambling fee money.
(c)	Enforceability	It is valid and enforce-able.	It is void and unenforceable agreement.
(b)	Public welfare	They are beneficial to the society.	They are regarded as against the public welfare.
(e)	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in the case of wagering agreement.

Question No. 2 May2018(5Marks)

Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him"

Answer:

A claim for necessaries supplied to a minor is enforceable by law, but minor is not liable for any price that he may promise and never for more than the value of necessaries.

There is no personal liability on the minor, but only his property (estate) is liable.

Hence, the statement "minor is liable to pay for necessaries supplied to him.", is incorrect.

Question No.3 May2018 (5 Marks)

Define Fraud. Whether “mere silence will amount to fraud” as per The Indian Contract Act, 1872?

Answer:

Fraud means and includes any of the following acts committed by a party to contract, or with his connivance, or by his agent, with an interest to deceive another party thereto or his agent, or to induce him to enter into the contract.

1. The suggestion, as a fact of that which is not true, by one who does not believe it to be true.

2. Active concealment of fact by one having knowledge or belivf of the fact.

3. A promise made without any intention of performing it.

4. An act fined to deceive.

5 Any act declared as fraudulent by law.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silent to speak, unless his silence is, it itself, equivalent to speech.

A party under contract is under no obligation to disclose the whole truth to the other party "Caveat Emptor" i.e. Let the buyer beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Question No. 4 June 2019 (7 marks)

"Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act 1872?

Answer:

Mere silence is not fraud:

Mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, is equivalent to speech. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the buyer beware is

the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud.

Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Silence is fraud:

1. Duty of Person to Speak:

Where the circumstances of the case are such that it is the duty of the person observing silence to speak.

Following contracts come in this category:

(a) Fiduciary relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts, known to him.

(b) Contracts of Insurance: In such contracts, there is an implied condition that full disclosure of all material facts shall be made, else contract is avoidable.

(c) Contracts of Marriage: Every material fact must be disclosed by the parties to a contract of marriage.

(d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

(e) Share Allotment Contracts: Person issuing 'prospectus' at the time of public issue of shares/debentures, have to disclose all material facts within their knowledge.

2. Where silence itself is equivalent to speech:

For Example, A says to B. "If you do not deny it, I shall assume that the horse is sound." B says nothing his silence amounts to speech. In case of fraudulent silence, contract is not voidable if the party whose consent was so obtained had means of discovering the truth with ordinary diligence.

Question No.5 June 2019 (5 Marks)

Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872

Answer:

A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.

The essential ingredients of undue influence under the Indian Contract Act, 1872 are:

(i) Relation between the parties: A person can be influenced by the other when a near relation between the two exists.

(ii) Position to dominate the will: The relation between the parties are such that one of them in a position to dominate the will of the other.

(iii) The object must be to take undue advantage: Where the person in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

(iv) Burden of proof: The burden of proving absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will the other.

Question No. 6 Nov 2019 (5 marks)

Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872.

Answer:

"Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement"

Effects of coercion under Section 19 of Indian Contract Act, 1872:-

(i) Contract induced by coercion la voidable at the option of the party whose consent was so obtained

(ii) The party receiving any benefit under the voidable contract must restore such benefit so far as may be to the person from whom it was received

(iii) A person to whom money has been paid or delivered under coercion must repay or return it.

Question No. 7 Nov 2020 (7 marks)

Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.

Answer:

According to Section (17) of the Indian Contract Act, 1872
"Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent, which an intention to deceive another party there to or his agent, or to induce him to enters into a contract.

Following are some acts:

(a) The active concealment of the fact by one having knowledge or brief of the fact.

(b) A promise made without any intention of performing it.

(c) any other act filed in deceive.
(d) any such act which low declares to be fraudulent, etc.
E.g.: A sells by auction to B, a house which A known to be unsound, A says nothing to B. This is not fraud by A

Silence may sometimes be fraud or will not all depend upon facts and circumstances of case.
Misrepresentation:

According to Section (18) of the Indian Contract Act, 1872. Misrepresentation means misstatement of material facts made believing it to be true without any intention of delivering the other party.
Ex: A makes a statement to B that C will be made the director of a company A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false the statement amount to misrepresentation.

Difference of fraud and misrepresentation is as follows:

Fraud	Misrepresentation
1) Intentional misstatement of facts.	Innocent misstatement of facts.
2) Intention to deceive is present.	Intention to deceive is not present.
3) Aggrieved party can avoid the contract and claim damages as well.	Aggrieved party can avoid the contract but no damages can be claimed.

Question No.8 Nov 2020(4 Marks)

Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872?

Answer:

Provision: According to Indian Contract Act, 1872. All Agreements in restraint of any trade or which are opposed to public policy are void and are such which are expressly declared by law to be a void agreement.
Analysis: In the given case, Mr. X has been fighting a long drawn litigation with Mr. Y To support his legal campaign he enlists the services of Mr. C who is a judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y

As this agreement is an agreement which is void and opposed to public policy hence, it cannot be enforced.

Concession: As at the end X refuses to pay Mr. C the decided amount Mr. C cannot recover the amount promised by Mr. X under the provision of Indian Contract Act, 1872 as it is a void agreement b/w the two.

Question No. 9 Jan 2021 (4 Marks)

Mr. S aged 58 years was employed in a Govt Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹10 Lakhs as consideration to Mr. S in order to induce him to retire.
Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

Answer:

According to the Provisions of Indian Contract Act, 1872

An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void s they are tantamount to sale of public offices.
(1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment as void.
(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void. In the given case, Mr. D offered ₹10 lakh to Mr. S as consideration in order to induce him to retire so that Mr. D can be appointed in his place.
The above agreement is opposed to public policy therefore void.

Performance of Contract

Question No. 1 **Dec 2022 (5 Marks)**

Differentiate between Novation and Alteration as per The Indian Contract Act, 1872.

Answer:

Difference between Novation and Alteration:

	Novation	Alteration
(i)	Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties.	In case of alteration the terms of the contract may be altered by mutual agreements by the contracting parties but the parties to the contract will remain the same.
(ii)	In case of novation there is altogether, a substitution of new contract in place of the old contract.	In case of alteration it is not essential to substitute a new contract in place of the old contract. In case of alteration there may be a change in some of the terms and conditions of the original agreement.

Question No. 2 **Dec 2021 (7 marks)**

Explain any five circumstances under which contracts need not be performed with the consent of both the parties.

Answer:

As per the given sections of The Contract Act, 1872 the circumstance Which contract need not be performed with the consents of both the parties are as follows:

~ Section-62: If the parties to the contract agrees to
(i) Substitute a new contract for it or

(ii) Rescind it or

(iii) Alter it.

~ Section-63: If the promisee

(i) dispenses with or remits, wholly or in part, the performance of the promise made to him.
(ii) Extend the time for such performance.

(iii) Accepts any satisfaction for it

~ Section-64: If the person at whose option it is voidable rescinds the contract.
~ Section-65: If the agreement contract is discovered to be void, the person who has received an advantage under such agreement or contract is required to restore the same or make compensation for a from whom he received it.
~ Section-66: A recission must be communicated to other party in the manner similar to communication of proposal.
~ Section-67: If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promises, contract need not be performed.

Question No. 3 May 2018 (4 marks)

X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z.

Answer:

According to Section 43 of Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisor to perform the whole of the promise.

Also, each of two or more joint promisor may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appear from the contract.

In other words, if one of the joint promisor is made to perform the whole contract, he can call for a contribution from others.

It also say that if any one of two or more joint promisor makes default in such contribution, the remaining joint promisor must bear the loss arising from such default in equal shares.

In the given case X, Y and Z jointly promised to pay ₹ 3,00,000 to D. Y could pay only 20,000 (i.e. 1/5 of 1,00,000), hence loss due to his default i.e. 80,000 will be borne equally by X & Z. Now, since X is compelled to pay entire amount, he can call for contribution from Z of his share i.e. ₹ 1,00,000.

Thus, the extent to which X can recover the amount from Z is ₹ 1,40,000.

Question No. 4 Nov 2018 (4 marks)

Mr. X and Mr. Y entered into a contract on 1" August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available

between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1 September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

Answer:

According to the facts of the case it can be clearly observed that the contract entered into by the parties Mr. X and Mr. Y demonstrates a case under the applicability of the provisions of Section 56 of Indian Contract Act, 1872 that State – "A contract to do an act which alter the contract is made becomes impossible by reason of some event which the promisor could not prevent becomes void."
In this case Mr. X has promised to supply 50 tons of sugar to Mr. Y for which Mr. Y has paid an amount of ₹ 50,000 in advance according to the terms contract. But due to severe flood the only mode of transportation available between their places a damaged which clearly makes the execution of delivery of 50 tons of sugar to Mr. Y impossible within the stipulated time. Now Mr. X claims compensation of ₹ 10,000 from Mr. Y for non-acceptance of delivery after expiry of the stipulated time period but since the contract has already gone void due to impossibility of performance within the stipulated time period there remains no legal room for demanding compensation. But at the same time the contention of Mr. Y for refund of his previously advanced sum of ₹ 50,000 stands valid as under the provisions of Indian Contract Act 1872if a contract turns void due to any specific reason then all previously advanced sums have to be refunded.

Question No. 5 June 2019 (6mark

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.
On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of Indian Contract Act 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

Answer:

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death/inability of the promisor. As regards any other contract the legal representatives of the promisor are bound to perform unless contrary intention appears from the contract.
A contract is discharged by impossibility of performance. Impossibility may be created due to several factors, one of which may be as a result of some personal in capacity like dangerous malady.
In the given case, the promisor (Mr. C) got paralyzed during the performance of contract, due to which further performance of the contract becomes impossible and the contract becomes void.
(i) Mr. Rich, cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C as legal representative is not responsible to perform in case, of contracts involving personal skill.
(ii) Mr. Rich cannot ask Mr. K so refund the amount as the contract becomes void and unenforceable due to impossibility of performance.

Question No. 6 Nov 2019 (6 marks)

Mr. Sonumal a wealthy individual provided a loan of ₹80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹1,00,000 on 28.02.2019 and remaining ₹ 50,000 on 03.03.2019.
On 10.03.2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjusted ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.
Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of data of borrowal of funds,
Now you decide:
(i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

Answer:

Sometimes, a debtor owes several to the same creditor and make payment which in not sufficient to discharge all the debts, In such cases, the payment is appropriated as per provisions of Section 59 to 61 at the Indian Contract Act.

(i) Application of Payment where debt to be discharged is indicated: Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation of that the payment is to applied in discharge of some particular debt, the payment, if accepted, must be applied accordingly.

(ii) Application of Payment where debt to be discharged is not Indicated: Where the debtor has omitted to intimate that payment is to be applied in discharge of which debt, then creditor may apply it at his discretion to any lawful debt actually due to him from the debtor (even where it is barred by law).

(iii) Application of Payment where neither party appropriates: Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether or not they are barred by limitation. If the debts are of equal standing the payment shall be applied in discharge of each proportionately.

In the given case the debtor while making the part payment has indicated the debt in which the adjustment is to be made accordingly

(i) Contention of Mr. Datumal is correct as per provisions of the Act, to indicate the debt to be adjusted.

(ii) If the borrower does not insist on any order of adjustment of repayment, then lender at his discretion may adjust in any debt he wants.

(iii) In case neither of them appropriates, then repayment will be adjusted to the debt first in time.

Question No. 7 Nov 2020 (6 marks)

In light of provision of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date Mr. R didn't pay the agreed price Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique

item to B. What directions could be given by the court for breach of such contract?

Answer:

(i) According to Indian Contract Act, 1872
In the given case Mr. S and Mr. R made Contract wherein Mr. S agreed to deliver paper cup manufacturing machine to Mr. R and give payment on delivery. On the delivery date, Mr. R didn't pay the agreed price.
Thus Mr. S is free from his obligation and he is not bound to deliver the manufacturing machine to Mr. R

(ii) In this case Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on the due date and debt became time barred. After time barred debt, Mr. G agreed to settle the full amount to Mr. Y.
Thus acceptance of a time barred debt is enforceable under section (25) of the Indian Contract Act, 1872.
Which states that this agreement to pay a time barred debt is enforceable even without consideration.

(iii) A & B entered into a contract to supply unique item the alternate of which is not available in the market. A refused to supply the agreed unique item to B.
Thus court can order A for specific performance and can order him to make the good available it to B as it is a unique item only available to him.

Question No. 8 July2021 (6 marks)

X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of following in the light of The Indian Contract Act, 1872:
(i) Whether L can compel only Y to pay the entire loan of ₹ 90,000?
(ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if X, Y, and Z died?
(iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

Answer:

(i) If a promise is made by two or more persons (called joint promisor) then promise may compel anyone or more of the joint promisors to perform the whole contract. Liability under a joint promise is both joint as well as several. Thus, in this case L can compel only Y also to pay the whole amount of ₹ 90,000/-

(ii) If a promise is made two or more persons (called joint promisor) and all of them die then their liability well be borne by the legal representatives and all the legal heirs will be jointly and severally liable for the same. Thus, in this case L can compel only Y to pay the entire loan of ₹ 90,000.

(iii) If a promise discharges / releases one of the several join promisors, it does not discharge other joint promisors and the joint promisor so discharged remains liable to the other join promisor.
Thus, in the case, X will not be released from his liability towards Y and Z even though he is released by L from making contribution.

Question No 9 Dec 2021 (4marks)

A, B, C and D are the four partners in a firm. They jointly promised to pay ₹ 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ₹ 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.

Answer:

According to section 43 of Indian Contract Act, 1872, when two or more person make a joint promise, the promises may, in the absence of express agreement to the contrary, compel everyone / anyone or more of such joint promisor to perform the whole of the promise.
Also each of two or more joint promisor may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intension appear from the contract.
In other words, if one of the joint promisor is made to perform the whole contract, he can call for a contribution from others.
It also state that if any one or two or more joint promisor make default in such contribution, the remaining joint promisor must bear the loss arising from such default in equal shares.
In the given case A, B, C and D jointly promised to pay ₹ 6,00,000 to F.B was unable to pay any amount and C could pay only ₹ 50,000 (i.e., 1/3 of ₹ 150,000). Hence loss due to default i.e., 4,50,000 will be borne equally by A&D. Now since A is compelled to pay the entire amount, he can call for contribution from D of his share is ₹ 1,50,000.
Thus, the extent to which A can recover the amount from D is ₹ 2,75,000.

Question No. 10 June2022(4 marks)

Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ₹ 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

(i) Whether the management of Shital Vidya Mandir has right to terminate the contract?

(ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?

(iii) Can Shital Vidya Mandir claims damages that it has suffered because of this breach in any of the above cases?

Answer:

(i) When the contract in breached the aggrieved party get right to rescind the contract and claims damages as well.
In the given case, Sheena failed to perform her part of the contract.
Therefore, the management of Shital Vidya Mandir can terminate the contract as Sheena breached the contract.

(ii) If the management of Shital Vidya Mandir decides to continue with the contract, even after non-performance by Sheena and they intimate about the same to Sheena, then they cannot rescind the contract subsequently on ground of breach of contract committed by her.

(iii) Whether the management of Shital Vidya Mandir, decides to terminate to contract or to continue with it, in either case damages can be claimed by Shital Vidya Mandir.

Breach of Contracts and its Remedies

Question No. 1 July2021(5marks)

Explain what is meant by 'Supervening Impossibility' as per The Indian Contract Act, 1872 with help of an example. What is the effect of such impossibility?

Answer:

Subsequent or Supervening or Post:
Contractual Impossibility:

(i) Subsequent or post: Contractual impossibility is one which arises after the formation of contract has taken place.
(ii) Due to supervening impossibility, the contract becomes void and stands discharged.
(iii) If any benefit has accrued to any of the parties, then it must be restored

Illustration:

A sold to B a cargo of oil to be shipped by a particular ship. B paid ₹ 5 lakhs as purchase consideration. Before the time for shipping arrived the ship was damaged by wreck and loading of cargo was impossible now.
(a) Here the contract between A & B becomes impossible of being performed and thus the event can be called as Supervening Impossibility. Due to this the contract becomes void and both parties are discharged from their liability. A has to refund ₹ 5 lakhs which was taken from B under the contract.

Question No 2 June 2022 (5marks)

"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with references to provision of the Indian Contract Act, 1872.

Answer:

Liquidated damage is a genuine pre-estimate of compensation of damages for certain

anticipated breach of contract.
Parties make this estimation with an intent to:

(i) Have a detailed calculation on quantum of damages and
(ii) To convince outside parties

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In case of breach of contract, whether the sum named as liquidated damage or penalty, the Court will award only a reasonable compensation not exceeding the sum mentioned in the contract.

In other words, courts are empowered to reduce the sum payable on breach whether it is penalty or liquidated damages provided the sum appears to be unreasonably high and the aggrieved party shall not be allowed to claim a sum greater than what is specified in the written agreement.

Question No 3 May2018 (6 Marks)

M ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 11.5 lakhs. Due to labour strike, M Ltd. Could not manufacture and deliver the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. And were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer:

When a contract has been broken, the party who suffers by such breach in entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach of it.
Such compensation is not to be given for any remote or indirect loss or damage sustained by reasons of the breach.
In the given case, Shanti Traders suffered a loss ₹ 1.25 lakhs (12.75-11.50) due to breach of contract by M ltd. Cannot be held responsible.
Therefore, Shanti Traders can claim an amount of ₹ 1.25 lakh from M Ltd. And nothing beyond.

Contingent and Quasi Contracts

Question No. 1 July 2021 (7 Marks)

Explain the term Contingent Contract with reference to The Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.

Answer:

Contingent Contract:

(i) To do or not to do something
(ii) If some event, collateral to such contract,
(iii) Does or does not happen.
e.g. contract of Insurance, indemnity and guarantee fall under this category.

Illustration: X advances ₹ 25,000 to B based on promise made by S (Surety) to repay the amount if X fails to repay it within a month.

(i) Enforcement of contracts contingent on 'happening' of an event:
~ If the event happens, then the contract becomes valid.
~ If the event does not happen or becomes impossible, then contract becomes void.
(ii) Enforcement of contracts contingent on Non-happening of an event:
~ If the event happens, then the contract becomes void.
~ If the event does not happens or becomes impossible, then contract becomes valid.
(iii) A contract contingent upon future conduct of a living person:
In the future conduct of living person fulfills that the condition then contract becomes enforceable if the future conduct renders the happening of such event impossible then contract becomes void.
(iv) Contingent on happening of specified event within the fixed time:
If the event happens within fixed tune, the contract becomes enforceable else become void.
(v) Contingent on happening of specified event not happening within specified time:
If the event happens within specified time come out become void else valid and enforceable.
(vi) Contingent on an impossible event:
If performance is based on an important event then contract is void. Whether impossibility is known to the parties or not.

Question No. 2 Dec 2021 (5 Marks)

What is meant by 'Quasi-Contract'? State any three salient features of a quasi-contract as per the Indian Contract Act, 1972.

Answer:

Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract is imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi Contracts'. Such contract resembles with a contract so far, as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine, that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi-contract are:

(i) It does not arise from the agreement of the parties concerned but is imposed by law
(ii) Duty and not promise is the basis of such contract.
(iii) The right under is always a right to money and generally though not always to a liquidated sum to money
(iv) Such a right is available against specific person(s) and not against the whole world.
(v) A suit for its breach may be filed in the same way as in case of a complete contract.

Question No. 3 Nov 2021 (4 Marks)

X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could be found. He handed over the same to the manager off the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.
In the light of the Indian Contract Act, 1872, can X recover it from the Manager?

Answer:

The finder of goods has no right to sue the owner for compensation for trouble and Expense Voluntarily incurred by him to presume the goods and to find the true owner, but he may retain the goods against the owner until he receives such compensation, until the finder may retain the goods with him.
In the given case X finds wallet in a restaurant and hands it over to the manager as the

true owner could not be traced. After a week a demands the wallet back from the manager, which he refuses to give, saying it did not belong to X.
Held, the manager must return the wallet to 'X' as he being the finder of lost goods was entitled to retain the goods found against everybody except the true owner.
Thus, 'X' can recover the wallet from the manager.

2. The Sale of Goods Act, 1930

Formation of the contract of sale

Question No. 1	Nov 2018 (4 marks)

Differentiate between Ascertained and Unascertained Goods with example.

Answer:

The basic point of distinction between ascertained and unascertained goods with example can be discussed as under:
~ Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the act but has been judicially interpreted. In actual practice the term 'ascertained' goods is used in the same sense as 'specific' goods when from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.
Examples:- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods, becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the information of the contract.
~ Unascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract.
They are indicated or defined only by description or sample.
Example: If A agrees to sell to B one packet of salt of the lot of one hundred packets lying in his shop, it is a sale of un-ascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.

Question No.2	Dec 2021 (6 Marks)

Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.

Answer:

The main points if distinction between the 'Sale' and 'Hire Purchase' are as follows-

Basis of Difference	Sale	Hire Purchase
1. Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
2. Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of the bailee till he pays the last instalment.
3. Terminate of contract	The buyer cannot terminate the contract and in bound to pay the price of the goods.	The hirer may if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
4. Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
5. Transfer of title	The buyer can pass a goods title to a bona-fide purchaser from him.	They hirer cannot pass any title even to a bona fide purchaser.
6. Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the instalments.

Question No. 3 May2018 (4 marks)

What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery.

Answer:

Delivery means voluntary transfer of possession from one person to another. It may be made by doing anything, which has the effect of putting the goods, in the possession of the buyer, or any person authorized on his behalf.
Various modes of delivery are as follows:

(i) Actual Delivery: Physical delivery of goods to buyer
(ii) Constructive delivery: When it is effected without change in the custody or actual possession.
(iii) Symbolic delivery: Where there is a delivery of a thing in token of a transfer of something else.

Question No. 4 Dec 2022(4 marks)

Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sales of Goods Act, 1930.

Answer:

Sale of unascertained goods and Appropriation:
Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.
The essentials are:
(a) There is a contract for the sale of unascertained or future goods.
(b) The goods should conform to the description and quality stated in the contact.
(c) The goods must be in a deliverable state.
(d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carries.
(e) The appropriation must be made by:

(i) The seller with the assent of the buyer; or
(ii) The buyer with the assent of the seller

(f) The assent may be express or implied
(g) The assent may be given either before or after appropriation.

Question No. 5 June 2022 (6marks)

Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stone. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

(i) State with reasons whether Sonal can recover the amount from the Jeweller.

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?

Answer:

As per the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called that of a sale, but where the transfer of property in goods is to take place at a future date, subject to fulfilment of some condition, the contract is called an agreement to sell.
An agreement to sell becomes a sale when the time elapses or the conditions one fulfilled subject – to which the property in goods is to be transferred.
On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller but not a sale. Even the payments made by Sonal, the property in bangles can be transferred only after the fulfilment of conditions fixed between buyer and seller.
Since, during the replacement of the Ruby stones, the original design as disturbed, Sonal has the right to avoid the agreement to sell and can recover the price paid.
On the other hand, if Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even he has to bear some expenses for repair, he cannot charge it from Sonal.

Conditions and Warranties

Question No. 1 Nov 2018 (6Marks)

What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"?

Answer:

In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

The exceptions to the Doctrine of Caveat Emptor are:

(i) Fitness as to quality or use: Where buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the sellers' skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [section 16(1)].

(ii) Good purchased under patent or brand name: In case where the goods are purchased under the patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].

(iii) Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.

(iv) Goods of merchantable quality: Where the goods are bought by description from the seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat emptor is not applicable.

(v) Sale by sample: Where the goods are bought by sample, this rule of Caveat emptor does not apply if the bulk does not correspond with the sample [Section 17]

(vi) Goods by sample as well as description: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable.

(vii) Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat emptor is not applicable [Section 16(3)].

(viii) Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same

could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

Question No. 2 June 2019 (4 marks)

Discuss the various types of implied warranties as per the Sales of Goods Act 1930?

Answer:

Implied Warranties:
It is a warranty which the law implies in to the contract of sale. It is a stipulation which has not been included in express words, but the law presumes that the parties have incorporated it into their contract.

Following types of implied warranties are provided by Sale of Goods Act, 1930:

(i) Warranty as to undisturbed possession: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is later on disturbed, he is entitled to sue the seller for the breach of the warranty.
(ii) Warranty as to non-existence of encumbrances: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer at the time of making the contract.
(iii) Warranty as to quality or fitness by usage of trade: An implied warranty as to quality or fitness for a particular purpose maybe annexed or attached by the usage of trade.
(iv) Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

Question No. 3 Nov2020 (4marks)

Write any four exceptions to the doctrine of Caveat Emptor as per The Sale of Goods Act, 1930.

Answer:

According to section (16) of the Indian Contract Act, 1872:
"Subject to the provisions of this act or any other law for the time being in force there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale. But, there are certain exceptions to this rule of CAVEAT EMPTOR.

1. Fitness as to Quality or use: When the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies

on the sellers skill or judgement and the goods are of a description which is in the course of seller's business to supply it is the duty of the seller to supply goods as all reasonably fit for that purpose section 16(1).

2. Goods sold by description: When the goods are sold by description there is an implied condition that the goods shall corresponds with the description. It is not then the seller is responsible.
3. Sale by sample: When the goods are bought by sample, the rule of 'CAVEAT EMPTOR' does not apply in the bulk does not correspond with the sample.
4. Goods of merchantable quality: When the goods are bought by description from the seller who deals in goods of that description there is an implied condition that the goods should be of a merchantable quality. The rule 'CAVEAT EMPTOR' is not applicable.

Question No. 4 Jan2021 (6marks)

What are the difference between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the Sale of Goods Act, 1930?

Answer:

Point of differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty	A breach of warranty cannot be treated as a breach of condition.

Section 13 of Sales of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.
In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
Example: A agrees to supply B 10 bags of first quality sugar @ ₹ 625 per bag but supplies only second quality sugar, the price of which is ₹ 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ ₹ 25 per bag.

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question No. 5 Dec 2021 (4marks)

"A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provision of the Sale of Goods Act, 1930.

Answer:

'Breach of a condition in a sale of goods can be treated as a breach of warranty, but not otherwise:
This statement is quite correct. Section 12 and 13 of the Sale of Goods Act, throw light on this statement. The definitions given of these two terms under the Act are quite meaningful to support this statement.
"The condition in a contract of sale with reference to goods, is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated." [Section 12(2)].
"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated." [Section 12(3)]
These definitions distinguish the nature of the two stipulation as well the effect of the breach of the stipulations. Condition is an important stipulation than warranty and the law gives a right to the aggrieved party to cancel the contract in case of a breach of this stipulation, which right is not available in the case of breach of a warranty. On this basis the above statement is supported.

Question No. 6 June2022 (6marks)

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act?

Answer:

Implied condition in a contract of sale by sample

1. In a contract of sale of goods by sample, there is an implied condition that:
   (a) The bulk shall correspond with the sample in quality.
   (b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
   (c) The goods shall be free from any defects rendering them unmerchantable, which cannot be found even on a reasonable examination of the sample (ie. latent defects)
2. If any of the above conditions is not satisfied, then buyer is entitled to reject the goods.
   (a) Implied Warranties under Sale of Goods Act, 1930 warranty as to undisturbed possession-
   An implied warranty that buyer shall have and enjoy quiet possession of the goods. In other words, if the buyer having got possession of goods, in later, disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
   (b) Warranty as to Non-Existence of Encumbrances-
   An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at time the contract in entered into.
   (c) Warranty as to Quality or Fitness by usage of Trade-
   An implied warranty as to quality or fitness of goods for a particular purpose may be annexed or attached by the usage off trade.
   (d) Warranty as to disclosing dangerous nature of goods-
   Where goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable for damages.

Question No. 7 June2019 (6 Marks)

M/S Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood; Mango wood; Teak wood; Burma wood etc.
Mr. Das a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by carpenter. Mr. Das specifically

mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.
The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.
The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

Answer:

Caveat emptor means "let the buyer beware", i.e.in sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgement and makes a bad selection, he cannot blame any body except himself.
The rule is enunciated in the opening words of section 16 of the Sale of Goods act, 1930, which runs thus, "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale."
The rule of caveat emptor does not apply in the following case:
Fitness for buyer's purpose:
Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgement and the goods are of a description which is in the course of the seller's business to supply, the seller must supply the goods which shall be reasonably fit for the buyer's purpose.
In the given case Mr. Das had clearly intimated the seller of his specific purpose and the goods supplied by the seller were totally unfit for that purpose. The seller is bound to supply the goods that are reasonably fit for the purpose.
Held, the contract is avoidable by Mr. Das and he holds full right to either get his money back or to get right kind of wood as required for his purpose.

Question No. 8 Nov2019 (6 Marks)

Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg. to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.
The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.
The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati rice but it contained a mix of long and short grains.
The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.
Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?
Explain the basic law on sale by sample under Sale of Goods Act, 1930?
Decide the fate of the case and options open to the buyer of grievance redressal as per the provisions of Sale of Goods Act, 1930?
What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

Answer:

In a contract of sale by sample, there is an implied condition that

(a) The bulk shall correspond with the sample in quality.
(b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
(c) The goods shall be free of any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.
In the given case;
Mrs. Geeta casually examined the sample and did not notice that sample contained mix of long and short grains. Hence, Mrs. Geeta cannot avoid the contract and will not be successful in the suit. However if the buyer had specified her exact requirements, then seller must supply such goods which are reasonably fit for the given purpose.

Question No. 9 Dec2021 (3Marks)

TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber.

Answer:

As per the provisions of the Sale of Goods Act, 1930. The doctrine of *Caveat emptor* is subject to the exception of fitness as to quality or use. Which states that where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on seller's skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16(1)]
In the present case timber was purchased for the purpose of making the drums. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. Now it is clearly mentioned that timber is commercially fit for the purpose for which it was ordered hence that contract could not be avoided. [Bombay Burma Trading Corporation Ltd. Vs Aga Mohammad.]

Question No. 10 Dec 2022 (6marks)

Mr. K visited M/S Makrana Marbles. For the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that the can clearly ascertain the correct mis and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different. Mr. J ignored the above suggestion.
Mr. J, supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of marble. The tiles fitted in the parking space also got damaged vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load.
Discuss in the light of provisions of Sales of Goods Act 1930:

(i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K and Mr. J.

(ii) Whether the replacement of damaged tiles be imposed on M/S Makrana Marbles? Explain.

Answer:

(i) Duty of the buyer according to the doctrine of "Caveat Emptor":
In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is dealing/selling
Duty of the seller according to the doctrine of "Caveat Emptor".
The following exceptions to the Caveat Emptor are the duties of the seller:
(a) Fitness as to the quality or use
(b) Goods purchased under patent or brand name
(c) Goods sold by description
(d) Goods of merchantable quality
(e) Sale by sample
(f) Goods by sample as well as description
(g) Trade usage
(h) Seller actively conceals a defect or is guilty of fraud
Hence, in the given case Mr. J cannot refuse to replace the marble as it was clearly mentioned that caveat emptor deals with the principle of fitness to the quality or use. Mr. J needs to replace the marbles.

(ii) As Mr. J has specifically mentioned that the tiles can bear only a reasonable weight and not more than that. Hence, Mr. K cannot force him to replace the damaged tiles be imposed on M/S Makhrana Marbles.

Transfer of Ownership and Delivery of Goods

Question No. 1 May2018 (6marks)

What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods.

Answer:

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer. The essentials regarding appropriation of unascertained goods are as follows:

(a) There is a contract for the sale of unascertained goods or future goods.
(b) The goods should confirm to the description and quality stated in the contract.
(c) The goods must be in a deliverable state.
(d) Goods must be unconditionally appropriated.
(e) The appropriation must be made by:
    (i) the seller with the assent of the buyer, or
    (ii) the buyer with the assent of the seller
(f) The assent may be express or implied.
(g) The assent may be given either before or after the appropriation.

Question No. 2 June2019 (6marks)

"A non-owner can convey better title to the bonafide purchaser of goods for value". Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of Sales of Goods Act 1930?

Answer:

The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as the seller. This rule is Expressed as "Nemo dat quod Non habet" which means that no one can give what he has not got.

In the following cases, a non-owner can convey better title to the bonafied purchaser of goods for value:

1. Sale by a Mercantile agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer if sale is made with the consent of the principal.
2. Sale by One of the Joint Owners: If one of several joint owners of goods has the sole possession of them by permission of the Co-owners, the property in the goods is transferred to any person who buys from such joint owner in good faith.
3. Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, etc. provided that the contract had not been rescinded until the time of sale.
4. Sale by one who has already sold the goods but continues in possession thereof: If a person has sold the goods but continues to be in possession of them or of the documents of title to them, he may sell them to third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although property in goods had passed to the first buyer earlier.
5. Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods in good faith and without notice of the lien, he would get a good title to them.
6. Effect of Estoppel: Where the owner is estoppel by the conduct from denying the sellers authority to sell, transferee will get a good title as against the true owner.
7. Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit, resells the goods, the buyer acquires a good title to the goods as against the original buyer.
8. Sale under provisions of other Acts:
   (i) Sale by an official receiver/ liquidator.
   (ii) Purchase of goods from finder of lost goods.
   (iii) A sale by pawnee can convey a good title to the buyer.

Question No. 3 Nov2020 (6 marks)

Explain any six circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per The Sale of Goods Act, 1930.

Answer:

Transfer of title (section 27-30) of the Indian Sale of Goods Act, 1930: Subjects to the provisions of this act or to any other law for the time being in force, when the goods are sold by a person who is not the owner and does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. In general the rule regarding to transfer of title is that the seller

cannot transfer to the buyer of a goods a better title than he himself has. If the seller is not the owner of the goods the buyer will also not become the owner.
The rule is explained in Latin maxim which says 'nemo dat quod non habet' which means no one can give what he has not get.
But this rule has certain exceptions which says that non-owner can convey a better title to a bona-fide purchaser of goods:-
(a) Sale by a mercantile agent: When the goods are sold by a mercantile agent for the documents of title goods would pass a good title to the buyer. In the following circumstances namely:-

1. He has this possession of goods with the consent of the owner.
2. If the sale was made by him while acting as an agent in the normal course of business
3. If the buyer has acted in good faith and has no notice of the fact that seller has no authority to sell

(b) Sale by one of the joint owners: If one of the several joint owners of the goods has the sole possession of them by the permission of the other co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has no notice that has no authority to sell.

(c) Sale by a person in possession under a voidable contract: A buyer would acquire a better title to the goods sold to him by a seller who had obtained possession of goods under a contract voidable on the ground of coercion, fraud etc. provided that the contract has not been rescinded until time of sale.

(d) Sale by one who has already sold the goods but continues in possession thereof:

If a person has sold goods but continues to be in the possession of them or of the documents of title to goods, he may sell them to a third person who obtains the delivery there of in good faith and without notice he would have a good title so them.

(a) Sale by an unpaid seller:
When an unpaid seller who have exercised his right of lien or stoppage in transit resells the goods the buyer acquire a better title to the goods as against the original buyer.

(f) Sale under the provisions of other Act:

1. Sale by an official liquidator of the company which give purchaser a valid title
2. Sale of goods by a finder of lost goods which take them under his custody
3. Sale by Pawnee will convey a better title to the buyer.

Question No. 4 July 2021 (4 Marks)

"Risk Prima Facie passes with property." Elaborate in the context of The Sales of Goods Act, 1930.

Answer:

Risk Prima Facie passes with property (Section 26):

(a) The term risk means the liability to bear the loss, if goods are lost or damaged.
(b) The general rule is that, risk follows ownership i.e. if the goods are lost or damaged at any point of time, the loss shall be borne by the owner of the goods.
(c) Price has been paid or delivery has been made or not, is immaterial with respect to passing of risk.
(d) However, there are certain exceptions to the above rule:

1. If the loss or damage of goods due to delay in delivery, then the person who is responsible for such delay has to bear the loss
2. If a party holds the goods a bailee (whether buyer or seller), then that person has to bear the risk in case of lost or damaged goods.
3. If risk is separated either by an agreement or by a trade custom, then the person holding the risk has to bear the loss in case of or damage of goods.
   In all these above cases it is immaterial, whether property has passed to buyer or not.

Question No. 5 June2022 (4 Marks)

What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

Answer:

The contract for the sale of specific goods is void -ab-initio, if

1. at the time when the contract was made,
2. the goods are already perished or become so damaged as no longer correspond with their description in the contract.
3. without the knowledge of the seller. If both the parties to the contract are under mistake as to a matter of fact essential to the contract, then the contract is void-ab-initio due to bilateral mistake.

Similarly, an agreement to sell specific goods also becomes void, if the goods perish or get damaged, subsequent to the making of the contract, without any fault on the part of buyer or seller. This is due to impossibility of performance due to impossibility of performance due to subsequent events.

Question No. 6 Dec2022 (6 Marks)

What are the rights of unpaid seller in context to re-sell the goods under Sale of Goods Act, 1930?

Answer:

Right of re-sale [Section 54]: The right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer. The unpaid seller can exercise the right to re-sell the goods under the following conditions:

1. Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.
2. Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer tails within a reasonable time to pay or tender the price, the seller may resell the goods.
   It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:
   (a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
   (b) Retain the profit if the resale price is higher than the contract price. It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer.
   Thus, the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)]
3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default is payment of the price, the seller will resell the

goods to some other person.
In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of remate is given.

5. Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

Question No. 7 May2018 (6 Marks)

Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per The Sale of Goods Act, 1930.

Answer:

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such a request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract. Thus, in the given case, Mr. D can recover damages from Mr. E and can repudiate the contract as well.

Question No. 8 Nov2018 (6Marks)

Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.
Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending?

Answer:

According to the facts of this case it stands pretty much clear to the judgement of an independent observer that the property in the goods sold by Mr. G had already passed to Mr. H after the payment of dues and the examination of goods by the agent of Mr. H. Hence it can be easily concluded that the liability for damage suffered by the goods would fall on the buyer i.e. Mr. H and not Mr. G since the transfer of title of the goods had already taken place before the damage occurred.

Question No. 9 Nov2019 (4Marks)

State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930.

Answer:

The property in unascertained goods or future goods does not pass until the goods are ascertained.
Such goods are defined only by description and not as goods identified and agreed upon when the contract is made.
The following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods.
The property in such goods passes to the buyer when the goods in a deliverable state are unconditionally appropriated to the contract.
Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:
(a) There is a contract for the sale of unascertained or future goods.
(b) The goods should conform to the description and quality stated in contract.
(c) The goods must be in a deliverable state.
(d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
(e) The appropriation must be made by:

1. the seller with the assent of the buyer, or
2. the buyer with the assent of the seller

(f) The assent may be express or implied.
(g) The assent may be given either before or after appropriation.

Question No. 10 Nov 2020 (6 Marks)

Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?

1. **Examine with reference to the provisions of the Sale of Goods Act. 1930, what recourse is available to Ms. R?**
2. **Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?**

Answer:

Goods sent on approval or on sale or return basis (Section 24) of the Sales of Goods Act, 1930.
When the goods are delivered to the buyer on approval or on sale or return basis or other similar terms the property therein passes to the buyer.
(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
(b) If he does not signify his approval or acceptance to the seller but retains the goods on the expiration of such time, if no time has been fixed, then on the expiration of the reasonable time.
(c) he does something to the goods which as equivalent to accepting the goods.

But sometimes, it may be noted that where goods have been delivered by a person on 'Sale or return' on the terms that the goods well to remain the property of the sellers till they are paid for, the property therein does not pass to the buyer until the terms are complied with i.e. cash is paid for.
In the given case Mr. R owns a two wheeler which she handed over to her friend MSK on sale or return basis. After a week MSK neither returned the vehicle nor made payment for it. She instead pledge the vehicle to Mrs. A to obtain a loan.

1. Thus, according to this case Mr. R has no right against Mr. A. He can only recover the price of the two wheeler from Mr. K.
2. Yes, my answer will be different if it had been expressly provided that the vehicle would remain the property of Mr. R until the price has been paid then it says that at the time of pledge the ownership was not transferred to Mr. K. Thus, the pledge was not valid and R can recover from the two wheeler from A as well.

Question No. 11 Jan2021 (6Marks)

Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

1. Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?
2. What is the remedy available to Mr. M?

Answer:

Legal Provision: According to Section 15 of Sales of Goods Act, 1930. Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods. It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.
Fact: Here in the given problem, Mr. M went to Mr. T's (retail trader) shop and asked for exhaust fan and approved a particular brand and paid for it. The fan which was delivered at M's house was a table fan. So, he asked Mr. T to exchange the same but Mr. T refused to do so.
Conclusion: Applying the above legal provision is the given problem we can coriclude as follows:

(1) Mr. T is not right he can't refuse to exchange the fan as the goods are not according to description. Buyer has asked for exhaust fan and seller has supplied table fan condition as to description is breached.

(2) Remedy available to Mr. M-Mr. M can repudiate/rescind the contract, i.e. he can return the table fan and ask for damages or both.

Unpaid Seller

Question No. 1 Nov2019 (6 Marks)

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Answer:

Rights of an unpaid seller against the goods under Sale of Goods Act, 1930 are:

(a) A lien or right of retention: An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e. keep the goods in his possession and refuse to deliver them to the buyer until the fulfilment or tender of the price. This right depends upon physical possession i.e. is a possessory lien. Lien is cost as soon as the seller parts win the goods.
(b) The Right of Stoppage in transit: The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming the possession of them and retaining possession until payment of the price.
(c) Right of re-sale: The unpaid seller may re-sell:

1. Where the goods are perishable.
2. Where such right is expressly resumed.
3. Where seller tenders notice to buyer of his intention to re-sell and buyer still does not tenders price within a reasonable time.

(d) Right to withhold delivery: If the property in the goods has passed, the unpaid seller has right as described above. If however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

Question No. 2 Jan2021 (4Marks)

What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?

Answer:

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:
(a) Where goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(b) Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
(c) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
(d) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
(e) Reserved price: The sale may be notified to be subject to a reserve or upset price, and
(f) Pretended bidding: If the seller make use of pretended bidding to raise the price, the Sale is voidable at the option of the buyer.

Question No. 3 July2021 (6 Marks)

Discuss the rights of an unpaid seller against the buyer under The Sales of Goods Act, 1930.

Answer:

Rights of an unpaid seller against the buyer are as follows:

1. Suit for price:
   (a) The seller may sue the buyer for the price, if the buyer is unable to or neglects or refuses to pay the price.
   (b) This may happen in any of the following cases:

(i) When property in goods has passed to the buyer, but buyer has failed to pay the price.
(ii) When price is payable on a certain day and the buyer fails to pay on that day.
In the above cases, seller may sue the buyer for the recovery of price, even though property in goods has not passed and the goods have not been appropriated to the contract.

2. Suit for damages for non-acceptance:
If buyer refuses to accept and pay for goods, the goods may suffer damage due to delay, and seller may sue the buyer for that.

Question No. 4 Dec2021 (3 Marks)

AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Answer:

The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stopage of the goods in transit available to an unpaid seller. The section states that the right is exercised by the seller only if the following conditions are fulfilled:-

(i) The seller must be unpaid.
(ii) He must have parted with the goods
(iii) The goods must be in transit.
(iv) The buyer must have become insolvent.
(v) The right is subject to the provisions of the Act.
Applying the provisions to the given case, AB being still unpaid, can stop the delivery of 450 bags sent by the transport as these goods are still in transit.

Indian Partnership Act, 1932

General Nature of a Partnership

Question No. 1 May 2018 (4 Marks)

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

Answer:

The business must be carried on by all the partners or by anyone or more of the partner acting for all. This is the cardinal principle of the partnership law. An act of one partner in the course of the business of the fem is in fact an act of all partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.
Sharing of profits is an essential element to constitute a partnership, but it is only a prima facie evidence and not conclusive evidence. Conclusive evidence of existence of partnership is only mutual agency.
The receipt of profit share by one person of a business, does not itself make him a partner with the persons carrying on the business. Such cases are:
1. By a servant or agent as remuneration.
2. By a widow or child of a deceased partner, as annuity.
3. By a lender of money to persons engaged or about to engage in any business.
4. By a previous owner or part owner of the business.

Question No. 2 June 2019 (4 Marks)

"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per The Indian Partnership Act 1932?

Answer:

Mode of Determining Existence of Partnership:
In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved:
1. There was an agreement between all the persons concerned.
2. The agreement was to share the profits of a business, and
3. The business was carried on by all or any of them acting for all.

1. Agreement: Partnership is created by agreement and not by
2. Sharing of Profits: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima-facie evidence and not conclusive evidence. Although the right to participate in profits is a strong test of partnership, yet the relationship is there or not, depends upon the whole contract between the parties
3. Agency: Existence of mutual agency is the cardinal principal partnership law, and is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as agent of other partners. So, the act of one partner done on behalf of the firm, binds all the partner.
   If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Question No. 3 Nov 2020 (2 Marks)

What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932?

Answer:

Partnership at will (Section 7) of the Indian Partnership Act, 1932 which says that partnership at will is a partnership when:
(a) no fixed period has been agreed upon the duration
(b) there is no provision made as to the determination of partnership.

Question No. 4 Jan 2021 (2Marks)

What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932?

Answer:

Particular Partnership:
A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership".
A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

Question No. 5 Jan 2021 (2 Marks)

Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?

Answer:

Nominal Partner:
A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.
He is not entitled to share the profits of the firm. Neither he invest in the firm nor takes part in the conduct of the business. He is, however, liable to third parties for all acts of the firm.

Question No. 6 Jan 2021 (4 Marks)

Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932.

Answer:

Mutual Agency:
Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Question No. 7 Dec2021 (6 Marks)

Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

Answer:

Definition of 'Partnership' (Section 4)
As per the Partnership Act, 1932 mentioned in section 4 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Elements of Partnership:
The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence.

1. Partnership is an association of two or more persons.
2. The partnership must be a result of an agreement entered into by all persons concerned.
3. Partnership is organized to carry on some business
4. The agreement must be to share the profits of the business
5. The business must be carried on by all or any of them acting for all.

Explanation of any two elements in detail are as follows.

1. Association of two or more persons:
   Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.
   The Partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.
2. Agreement:
   It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus the nature of the partnership is voluntary and contractual.
   An agreement from which relationship of partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

Question No. 8 Dec2021 (4Marks)

Sharing in the profits is not conclusive evidence in the creation of partnership". Comment.

Answer:

Evidence of partnership: Partnership, generally is an agreement between two or more competent persons to carry on some business and distribute / share the profits of such business.
Section 6 of the Indian Partnership Act prescribes the test to determine the existence of partnership. To determine whether a group of persons is a firm and its members are partners or not, their relation must be determined on the basis of relevant facts. [Moore Vs. Daris (1879) 11 Ch. D261]
The parties to a partnership contract do not become partners simply on the basis that they have been described, in the deed, as partners, [Abdulla vs. Alladia (1927) 8 Lahore, 310]
Sharing in the profits of the firm is a prima facie evidence of establishment of partnership but it is not a conclusive proof. As per the provision of section 4 of the Indian Partnership Act, sharing of profits is not the sole determining fact. Other tests are also required to be applied. [Cox Vs. Hicman). A person may, in many ways share in the profits of a business without being a partner. Explanation II of section 6 of the Indian Partnership Act also makes it clear that a creditor is not a partner. Similarly a servant, an agent, widow or child of the deceased partner may receive a share in the profits. But they do not become partner. Thus, the real thing to be seen in such cases is whether they are participating in the business of the firm in the capacity of partners and represent each other in the said capacity. (Malomach & Co Vs. court of wards (1872) [R 2 CP 419]

Question No. 9 June2022 (2Marks)

What do you mean by 'Partnership for a fixed Period' as per the Indian Partnership Act, 1932?

Answer:

Partnership for a fixed period is a partnership where-

(a) A provision is made by a contract between the partners for the duration of the partnership, the partnership is called 'partnership period for a fixed period.'

(b) It is a partnership created for a particular period of time.
(c) Such a partnership comes to an end on the expiry of the fixed period.

Question No. 10	Dec2021 (6Marks)

State whether the following are partnerships:

1. **A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as a taxi on other days and equality divide the earnings.**
2. **Two firms each having 12 partners combine by an agreement into one firm.**
3. **A and B, co-owners, agree to conduct the business in common for profit.**
4. **Some individuals form an association to which each individual contributes ₹ 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.**
5. **A and B, co-owners share between themselves the rent derived from a piece of land.**
6. **A and B buy commodity X and agree to sell the commodity with sharing the profits equally.**

Answer:

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

(a)Partnership is an association of two or more persons
(b) The partnership must be a result of an agreement entered into by persons concerned
(c) Partnership in organized to carry on some business
(d) The agreement must be to share the profits of the business
(e) The business must be carried on by all or any of them acting for all.

In the given situations if they satisfy any of the following conditions that they will be called as a partnership. Also if they satisfy the true test of partnership condition i.e. Agreement, sharing of profit and Agency.

1. A and B jointly own a car which they used personally on sundays and holidays and let it on hire as taxi on other days and equally divide the earnings creates an agreement between them for sharing of profits and mutual agency. Hence, it is a partnership.
2. Two firms each having 12 partners combine by an agreement into one firm is a partnership as they satisfy the above mentioned basic conditions
3. A and B, co-owners agree to conduct the business in common for profit is a partnership as it is satisfying the basic conditions to form a partnership.

4. Some individuals form an association with an object of charity do not amounts to become a partnership as they have created a Not-for-profit organization which does not carry the basic requirements of agreement between them, sharing of profits and mutual agency.
   Hence, it is not a partnership.
5. A and B, co-owners share between themselves the rent derived from a piece of land is not a partnership as it is lacking the mutual agreement between them.
6. A and B brought commodity X without an agreement only share profits equally does not amounts to a partnership.

Relations of Partners

Question No. 1 **Nov2018 (4Marks)**

"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(i) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner

(ii) A. State the liabilities of a minor partner both:

1. Before attaining majority and
2. After attaining majority

OR

B. State the legal position of a minor partner after attaining majority:

1. When he opts to becomes a partner of the same firm.
2. When he decide not to become a partner.

Answer:

1. The rights enjoyed by a minor partner are:

(i) A minor partner has a right to his agreed share of the profits and of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm and not otherwise.

(iv) On attaining majority he may within 6 months elect become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served so that effect

2. The liabilities of a minor partner:

(i) Before attaining majority:

a. The liability of the minor is confined only to the extent of his share in the profits and the property of the firm
b. Minor has no personal liability for the debts of the firm incurred during his minority
c. Minor cannot be declared insolvent but if the firm is declared insolvent his share in the firm vests in the official Receiver/ Assignee

(ii) After attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm

OR

2. The legal position of a minor partner after attaining majority:

(i) When he opts to become a partner of the same firm. If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in section 30(7) are as follows:
(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership
(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(ii) When he does not become a partner:
(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
(b) His share shall not be liable for any acts of the firm done after the date of the notice.
(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the registrar that he has or has not become a partner.

Question No. 3 June2019 (2Marks)

What is the provision related to the effect of notice an acting partner of the firm as per Indian Partnership Act 1932?

Answer:

The notice to a partner, who habitually acts in business of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partner's of the firm, just as a notice to an agent is notice to his principal. The notice must be actual and not constructive. It must be received working partner and not by sleeping partner. It must further relate to firm's business. Only then it would constitute a notice to the firm.

Question No. 4 June2019 (2 Marks)

Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act 1932?

Answer:

According to the Indian Partnership Act, 1932, subject to contract between the partner:

1. If a partner derives any profit for himself from any transaction of the firm, or from the sue of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm.
2. If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Question No. 5 Nov 2019 (2Marks)

When the continuing guarantee can be revoked under the Inman Partnership Act, 1932?

Answer:

According to Section 38, a continuing guarantee given to a firm or to third party in respect at the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

In other words, mere changes in the constitution of the firm operates to revoke the guarantee as to all future transactions. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

Question No. 6 Nov2019 (2Marks)

What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

Answer:

Section 14, specifically sales that the goodwill of a business is subject to a contract between the partners, to be regarded as "property" of the "firm". It may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business. Goodwill in a part of the property of the firm.

Question No. 7 Nov2019 (4Marks)

With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner.

Answer:

As per the provisions of Indian Partnership Act, 1932, effects of Insolvency of a partner will be as follows:

1. The insolvent partner cannot be continued as a partner.

2. He will be ceased to be a partner from the very date on which the order of adjudication is made.

3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.

5. Ordinarily, the insolvency of a partner, would result in dissolution of firm but remaining partners may agree to carry it on.

Question No. 8 Nov2020 (2Marks)

Comment on "the right to expel partner must exercised in good faith" under the Indian Partnership Act, 1932.

Answer:

Expulsion of a partner (Section 33):

A partner may not be expelled from a firm by any majority of partners save in exercise in good faith of powers conferred by a contract between the parties.

The following are the conditions:
(a) the powers of expulsion must have existed in a contract between the partners.
(b) the power must have been exercised by a majority of the partners.
(c) It have been exercised in good faith.

The test of good faith as required under is as follows:
(a) The expulsion must be in the interest of the partnership

(b) The partner to be expelled is served with a notice
(c) He is given an opportunity of being heard

Question No. 9 Nov2020 (4Marks)

Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

Answer:

Liability of firm for Misapplication by Partners (Section 27) of the Indian Partnership Act, 1932:
It may be observed that the workings of the two clauses of section 27 is designed to bring out clearly an important point of distinction between the two categories of such cases of misapplication of money by partners.

Clause (a): Covers the case where a partner acts within his authority and due to his authority as partner, he receives money or property belonging to a third party and misapplies that money all property. For this provision to the attracted, it is not necessary that the money should have actually came into the custody of the firm.

On the Other hand the provision of Clause (b):
Would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.
The firm would be liable in both the cases.
If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and other partners will not be liable, unless the money received comes into their possession all under their control.
Example: A, B and C are partners of a place for car parking. P stands his car in parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Question No. 10 Jan2021 (4Marks)

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act 1932

Answer:

Liability to Third Party (Section 25-27 of Indian Partnership Act 1932):

The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority This is because that all the acts done within the scope of authority are the acts done towards me business of the firm.
The question of liability of partners to third parties may be considered under different heads. These are as follows
1. Contractual liability / Liability of a partner for acts of the firm:

• Every partner is liable jointly with other partners and also severally for the acts of the firm done while he is a partner
• The expression "act of firm" connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.
Example: Thus, where certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm

2. Liability for tort or wrongful Act: A firm is liable for the loss or injury caused to a third party by the wrongful acts of a partner if they are done by partner while acting (a) in the ordinary course of the business of the firm (b) with the authority of the partners.
Example: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was held responsible for the same.

3. Liability for misappropriation by a partner: A firm is liable
(a) When a partner, acting within his apparent authority and receives money or other property from a third person and misapplies it or
(b) Where a firm in the course of its business, received money or property from a third person and the same is misapplied by a partner while it is in the custody of the firm.

Example: A, B, and C are partners of a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this lability, the firm is liable for the acts of A.
Note:- If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and the other partners will not be liable, unless the money received comes into their possession or under their control.

Question No. 11 July2021 (6 Marks)

Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain

acts. State the acts which are beyond the implied authority of a partner under the provisions of The Indian Partnership Act, 1932?

Answer:

Authority conferred on a partner under the provisions of Indian Partnership Act, 1932 is known as Implied authority of a partner. It is the authority conferred to act in a general way with respect to business of partnership firm and of a partner acts this way he binds all the other partner by his acts.
However, there are certain acts which are beyond the implied authority of a partner. They are as follows:

1. Submit a dispute relating to the business of the firm to arbitration.
2. Open a bank account in name his own name on behalf of the firm.
3. Compromise or relinquish any claim or portion of any claim by the firm
4. Withdraw a suit or proceeding filed on behalf of the firm.
5. Admit any liability in a suit or proceedings against the firm.
6. Acquire immovable property on behalf of the firm.
7. Transfer immovable property on belonging to the firm.
8. Enter into partnership on behalf of the firm.

Question No. 12 June2022 (4Marks)

Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm.

Answer

As per the Indian Contract Act, 1872. "A minor is incompetent to enter into the contract and any agreement made with or by minor is void-ab-initio.."
Therefore, a minor cannot be admitted in a partnership firm as a partner as this relationship emerges out of contract.
Although minor cannot become a partner in the firm, nonetheless, he can be admitted to the benefits of a partnership firm.
He may validly have a share in the profits of the firm, but this can be done only with the consent of all the partners of the firm

Rights of minor in the partnership firm-

1. He can access inspect and copy accounts of the firm
2. He will have a right to agreed share of property and profits of the firm.

3. At the time of his discontinuation, he can sue other partners for statement of his accounts and payment thereof.
4. On attaining majority, he may within 6 months elects to become a partner or not to become a partner. If he elects to become a partner then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm, after the date of the public notice served to that effect.

Question No. 13 Dec2022 (6Marks)

Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932?

Answer:

Expulsion of a partner (Section 33):

1. A partner may not be expelled from a firm by any majority of the partners, same in the exercise in good faith of powers conferred by contact between the partners.
2. The provisions of sub-section (2), (3) and (4) of Section 32 shall apply to an expelled partner as if he were a retired partner.

Analysis of Section 33.

1. The power of expulsion must have existed in a contract between the partners.
2. The power has been exercised by a majority of the partners; and
3. It has been exercised in good faith. If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm. The test of good faith as required under Section 33(1) includes three things:
   ~ The expulsion must be in the interest of the partnership.
   ~ The partner to he expelled is served with at notice.
   ~ He given an opportunity of being heard. If a partner in otherwise expelled, the expulsion is null and void.
   It is important to note that under the Act, the expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

Question No. 14 May2018 (6Marks)

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

Answer:

A partner may not be expelled from a firm by any majority of the partners, except in exercise of good faith of power conferred by contract between the partners. If all these conditions are not present, the expulsion is not deemed to be in bonafied interest of the business of the firm.
The test of good faith as required includes three things:
(a) The expulsion must be in the interest of the partnership.
(b) The partner to be expelled is served with a notice.
(c) He is given an opportunity of being heard.
If a partner is otherwise expelled, the expulsion is null and void.
Having regard to above we can say that expulsion of partner 'Y' by X and Z is not in accordance with the provision of Indian Contract Act and thus not valid.

Question No. 15 Nov2018 (3Marks)

Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co, which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head officer of the firms as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018 But the same was not paid is the legal heirs of Mr. C. On 18 October, 2018, Mr. X, a supplier suppled furniture worth ₹ 20,00,000 to M/s ABC & Co M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.
Analyse the above situation in terms of the provisions of the Indian Partnership

Act, 1932 and decide whether the legal heirs of Mr. C can be held liable for the dues towards Mr. X.

Answer:

According to the facts of this case the situation existent clearly indicates the application of Section 37 of the Indian Partnership Act, 1932 according to which where any member of a firm has died or otherwise ceased to be partner and the surviving or continuing partners carry on the business of the firm without any final settlement of the accounts as between them and the outgoing partner of his estate, then in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six present per annum on the amount of his share in the property of the firm.
In this case since there has been no decisive settlement of accounts between the heirs of Mr. C and Mr. A and Mr. B so it's pretty clear that the interest of the heirs of Mr. C is still existent in the profits and property of the firm and Mr. X wants to recover the amount not only from M/s ABC and Co. but also from the legal heirs of Mr. C he is justified in claiming such a recovery and his claim is legal and just according to the provisions of Section 37.

Question No. 16 Nov2018 (3 Marks)

Mr. M. Mr. N and Mr. P ware partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement.
After his retirement, Mr. M. Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

Answer:

According to the facts of this case it can be easily concluded that the contention of Mr. X for recovery of his dues from all the partners including Mr. P is quite justified and legal on ground of the provision under Section 32 of the Indian Partnership Act that states a retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given. In this case no such notice has been given by Mr. P of his retirement and so he cannot escape the liability incurred by the firm in its dealing with Mr. X.

Question No. 17 Nov2019 (6 Marks)

Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.
In the light of the Indian Partnership Act, 1932, explain.

(i) To what extent X will be liable if he failed to give public notice after attaining majority?
(ii) Can Mr. L recover his debt from X?

Answer:

A minor who is admitted to the benefits of a partnership firm during his minority, must within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later) he has to elect whether he wants to become a partner, or sever his connection with the firm. He may give public notice of his election to continue or repudiate but if he fails to give any public notice within the period stated above, he will be deemed to have elected to become a partner in the firm. Since, then he will be liable as other partner to the third parties for all acts of the firm done since he was admitted to the benefits of partnership.

In the given case.

(i) X will be liable to all third parties if he failed to give public notice after attaining majority.
(ii) Yes, Mr, L a supplier to the firm, can recover his debt from x.

Question No. 18 Nov2020 (6 Marks)

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31 July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.
Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

1. **Rights of P & Q to start a competitive business.**
2. **Rights of P & Q regarding their share in property of M/S PQRS & Co.**

Answer:

1. Right of an outgoing partners to carry on a competing business (Section 36)
   An outgoing partner may carry on a competing business with that of the firm and he may advertise such business but subject to the following conditions:
   (a) He may not use the firm name
   (b) He may not represent himself as a partner in the business of the firm.
   (c) He may not solicit the custom of persons who well dealing with the firm before he ceased to be a partner. A partner may make an agreement with his partner that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within a specified local limits shall be valid.
2. Right of an outgoing partner in shall of profits (Section 37): When a partner ceases to be a partner in a firm and the continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner then the outgoing partner shall be liable to such profits made since he ceases to be a partner in a firm from the use of him property in the firm or 6% interest on the property of the firm whichever is higher.
   Thus in the given case P Q R & S all the partner or in PQRS & Co. due to conflict P & Q left the firm and started a new firm in the name of P & Q Co. meanwhile R & S continued the same business in the same name of P Q R S & Co. Thus,
   (1) P&Q has the following rights to start a competitive business as stated above in Section (36)
   (2) P&Q will have a shall in the property of P Q R S & Co., according to the terms and conditions of Section (27) of the Indian Partnership Act, 1932 which are property stated and explained above the following paragraph of this page.

Question No. 19 Jan2021 (6 Marks)

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.
Explain with reasons:

(i) Whether a private estate is liable for the price of furniture purchased by the firm?
(ii) Whether does it make any difference it JR Limited supplied the furniture to the firm believing that all the three partners are alive?

Answer:

(i) Liability of estate of deceased partner (Sec:35 of Indian Partnership Act, 1932) Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two parties. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.
Fact of the Case:
Only order was placed during the life time of Mr. P but no delivery of furniture was made during his lifetime.
Applying the above Provision:
Since as there was no debt due in respect of goods in P's lifetime so his estate will not be held liable for the payment of price of furniture to J. R. Limited.
Further death of partner do not require any public notice.

(ii) It will not make any difference even if JR Limited supplied the furniture to the firm believing that all the three partners are alive since after the death of any partner his estate is not liable for any act done by firm after his death.
And death of partner do not require public notice also.

Question No. 20 July2021 (6 Marks)

Mr. Das, a general store owner went to purchase 200 kg. of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as ₹150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice.
The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice. With reference to the provisions of The Sales of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice?

Answer:

According to the provisions of Sale of Goods Act, 1930.
(a) In a contract of Sale of Goods by sample, there is an implied condition that:

- Seller must provide a reasonable opportunity to the buyer for inspecting the bulk
- The bulk must correspond to the sample in terms of quality.
- The goods must be from latent or hidden defects which render them un-merchantable.
  If any of the above condition is not satisfied, then the buyers entitled to reject the goods.

(b) If goods are bought under description, then the goods must correspond with the description. Otherwise buyer can, reject the goods.

Conclusion:
(i) In this case, Mr. Das does not have any option for grievance redressal as per provisions of the Act.
(ii) In this case, Mr. Das specified her exact requirement as to the length of the rice. Therefore, she can reject the rice as they are not in accordance with the description made by her.

Question No. 21 June2022 (6 Marks)

M/S ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, Being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek a Chartered Accountant. Mr. B and Mr. C were to interested that Mr. Prateek join them as

partner in M/S ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

Answer:

1. As per the Indian Partnership Act, 1932,
(i) A share in a partnership in transferable like any other property,
(ii) But as the partnership relationship is based on mutual confidence,
(iii) The assignee of a partner interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

2. The rights of such transferee are as follows:
(i) When the firm is continuing in business-
(a) Transferee is not entitle
-to interfere with the conduct of the business
-to require account, or
-to inspect the books of the firm

(b) Transferee is only entitled to receive the share of profits of the transferring partner and he is bound to accept the profits as agreed to by the partners (ie, he cannot challenge the account.)

(ii) On retirement of the transferring partner or on dissolution of the firm:-
(a) Transferee is entitled to receive the share of the assets of the firm to which the transferring partner was entitled.
(b) To ascertain his share, he is entitled to an account as from the date of the dissolution or retirement as the case may be.
Hence, we can say that Mr. Prateek cannot be introduced as a partner in the firm as other partners have not agreed for the same. However, Mr. A can transfer his interest to Mr. Prateek. But Mr. Prateek cannot challenge the books of accounts.

Registration and Dissolution of Firm

Question No. 1 May2018 (2 Marks)

Distinguish between "Dissolution of Firm" and "Dissolution of partnership"

Answer:

Sr. No.	Dissolution Firm	Dissolution of partnership
1.	It necessarily involves dissolution of partnership	It may or may not involve dissolution of firm
2.	Involves final closure of books of firm.	Does not involve final closure of the books.
3.	Firm may be dissolved by order of Court.	Dissolution of partnership is not ordered by Court.
4.	It involves winding up of the firm.	It involves reconstitution of the firm.

Question No. 2 May2018 (4 Marks)

What are the consequences of Non-Registration of a Partnership Firm? Discuss.

Answer:

Under the English law, the registration of firms in compulsory. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under section 69, non registration of partnership gives rise to a number of disabilities. Thus, the consequences of non-registration have a persuasive pressure for their registration. These disabilities are as follows:

1. No suit in a civil court by firm or other co-partners against third party:
   The firm or any other partner on its behalf cannot bring an action against third party for breach of contract entered into by the firm, unless the firm is registered and the person suing are or have been shown in the register of firms as partners in the firm.
2. No relief to partners for set-off of claim:
   In an action against the firm by a third party, neither the firm nor the partner can claim any set off, if the suit be valued for more than ₹100.

3. Aggrieved partner cannot bring legal action against other partner or the firm:
   A partner of an unregistered firm is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. (But such a person may sue for dissolution of firm).
4. Third party can sue the firm:
   In case of an unregistered firm, an action can be brought against the firm by a third party.

Question No. 3 Nov2018 (4 Marks)

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

Answer:

The four grounds as mentioned under Section 44 on which the Court can dissolve a partnership firm are:

(a) Insanity/Unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the Court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
(b) Permanent incapacity: When a partner other than the partner suing has become in any way permanently incapable of performing his duties as partner, than the Court may dissolve the firm.
(c) Misconduct: Where a partner, other than the partner suing, in guilty of conduct which is likely to affect prejudicially the carrying on of business, the Court may order for dissolution of the firm, by giving regard to the nature of business.
(d) Persistent breach of agreement:
   Where a partner other than the partner suing, wilfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him.

Question No. 4 June2019 (4 Marks)

"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the Various disabilities or disadvantages that a non- registered partnership firm can face in brief?

Answer:

Under the English Law, the registration of firms is compulsory. But the Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration. However, section 69, of the Act gives rise to a number of disabilities which attach to an unregistered partnership firm. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities are as follows:

1. No suit in a civil court by firm or other co-partner against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract, unless the firm is registered.
2. No relief to partner for set off of claim: Neither the firm, nor the partner can claim any set off if the suit be valued for more than ₹ 100.
3. Aggrieved partner cannot bring legal action against the other partner of the firm: A partner of an unregistered firm is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
4. Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Question No. 5 Nov2019 (4 Marks)

Dissolution of a firm is different from dissolution of Partnership". Discuss.

Answer:

As per the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the "dissolution of the firm." The particular partner goes out, but the remaining partner carry on the business of the firm, it is called dissolution of partnership.

Sr No.	Basic of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.

3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Question No. 6 Nov2020 (4 Marks)

Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

(i) What are the consequences of Non-Registration of Partnership firm?

(ii) What are the rights which won't be affected by Non-Registration of Partnership firm?

Answer:

(i) Consequences of Non Registration of a partnership (Section 69) According to the Indian Partnership Act, 1932 the registration of partnership firm is optional but it has to face various disabilities:-
(a) No suit in a civil court by a firm or other co-partners against third party:- The firm or any person on its behalf cannot take any legal action against the third party for a breach of a contract entered into by the firm until and unless the firm is registered.
(b) No relief to partners for set-off of claim:- If an action is brought against the firm by a third party then neither the firm nor the partner can claim any set-off if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

(ii) Non-registration of a partnership firm, however effect the following rights:- (a) The right of a third party to sue the firm or
(b) The right of partners to sue feel the dissolution of the firm or for the settlements of the accounts of a dissolved firm.
(c) The power of an official assignee to release the property of the insolvent partner and to bring an action.
(d) The right to sue or claim a set-off of if the value of the suit does not exceed ₹ 100 in value.

Question No. 7 July2021 (4 Marks)

Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of The Indian Partnership Act, 1932.

Answer:

Subject to Contract the Contract between the partners, after distribution of the firm, its accounts must be settled as follows.

(i) Payment of Losses:
Losses including deficiencies of capital are to be paid first out of profits then out of capital and lastly by partners individually in the proportion in which they have contributed capital.

(ii) Application of Assets:
(i) In payment of debt to third parties
(ii) In payment of each partner's advances
(iii) In payment of each partners surplus Capital i.e. which is in excess of capital ratio.
(iv) Remaining divided amongst partners in profit sharing ratio.

Question No. 8 June2022 (4Marks)

Explain the grounds on which court may dissolve a partnership firm in case of any partner files a suit for the same.

Answer:

The Court may dissolve a firm on any of the following grounds, if a partner files a suit-

1. Insanity/unsound Mind-
   Where an active partner (not sleeping partner) has become of unsound mind, then court may dissolve the firm on a suit filed by any other partner or by the next friend of such unsound partner. Although, temporary sickness, is not a ground for dissolution of firm.
2. Permanent Incapacity-
   Where an active partner (but not sleeping partner) has become permanently incapable of performing his duties as a partner, then court may dissolve the firm on a suit filed by any other partner. Such permanent incapacity may result from physical disablement, illness, etc.
3. Mis conduct-
   Where a partner is guilty of misconduct, which is likely to affect prejudicially the carrying on of business, then Court may order for dissolution of the firm by going regard to the nature of

business upon a suit filed by any other partner. It is not necessary that misconduct must relate to the conduct of the business. If misconduct is adversely affecting the business, then sufficient ground.

4. Persistent breach of agreement-
   Where a partner wilfully or persistently commits breach of agreements relating to the business and to the management of the affairs of the firm, or the conduct of the business, or otherwise so conducts himself in matter relating to the business in such a way that it is not possible for other partner to carry on the business in partnership with him, then court may order for dissolution of the firm on a suit filed by any other partner
5. Transfer of interest-
   Where a partner, transfers the whole of his interest in the firm to a third party, or allowed his share to be charged or sold by the Court, in the recovery of arrears of land revenue due by the partner, then Court may order for dissolution of the firm on a suit filed by any other partner.
6. Continuous/Perpetual losses-
   Where the business of the firm cannot be carried on except at a loss, then Court may order for dissolution of the firm, in such a case suit may be filed by any partner of the firm.
7. Just and Equitable Grounds-
   Where Court considers any other ground to be just and equitable for the dissolution of the firm, then it may dissolve the firm.

Question No. 9 Dec2022 (6 Marks)

"Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In the light of the given statement, discuss the consequences of non-registration of the partnership firms in India. Also, explain the rights unaffected due to non-registration of firms.

Answer:

Consequence of non-registration (Section 69):

Under the English Laws, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership given rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

(i) No suit in a civil court by firm or other co-partners against third party: The firm or any after person on its behalf cannot bring an action against the third party for branch of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

In other words' a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Exception: Non-registration of a firm does not, however, effect the following rights:

1. The right of third parties to sue the firm or any partners.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm.
3. The power of an official assignees, receiver of court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.
5. The right to suit and proceeding instituted by legal representative or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Question No. 10 June2019 (6Marks)

M/S XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th Aug. 2016, they inducted Mr. G an expert in the field of carpet manufacturing as their partner. On 10th Jan. 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

Answer:

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith of powers conferred by contract between the partners. It is, thus, essential that:

(i) the power of expulsion must have existed in a contract between the partners.

(ii) the power has been exercised by a majority of the partners, and

(iii) it has been exercised in good faith.

If all these conditions are not present the expulsion is not deemed to be done in bonafied interest of the business of the firm.
If a partner is otherwise expelled, the expulsion is null and void.
Thus, action taken by partner in expelling partner G is valid.

Question No. 11 July2021 (6 Marks)

Mr. M is one of the four partners in M/s. XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So he wants to sell his share in the firm to Mr. Z for settling the amount.
In the light of the provisions of The Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validity transfer his interest in the firm by way of sale?
(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer?

Answer:

(a) As per Section 29 of The Indian Partnership Act, 1932.
~ A share in a partnership firm is transferable like any other property.
~ But as this relation is based in mutual confidence,
~ The assignee of a partners interest by sale, mortgage, or otherwise cannot enjoy the same rights and privileges as the original partner.
(b) The rights of a transferee on the retirement of the transferring partner are as follows:
~ Transferee is entitled to receive the share of the assets of the firm to which the transferring partner was entitled.
~ To ascertain his share, he is entitled to access and inspect the accounts of the firm.
Conclusion:
In the given case,
(i) Mr. M can validly transfer his interest in the firm by way of sale.
(ii) Mr. Z is entitles to aforesaid rights after the retirement of Mr. M form the firm.

Question No. 12 June2022 (3 Marks)

Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One- Person Company (OPC)? If yes, can he give the name of Mr. S in the memorandum of Association as his nominee? Justify your answers with relevant provisions of the companies Act, 2013.

Answer:

In this case Mr. R is eligible to be incorporated as a One-Person-Company (OPC), since his stay in India is for a period of atleast 120 days (he actually stayed for 130 days) during the proceeding financial year. However Mr. R cannot give the name of Mr. S in the memorandum of association as his nominee even though his stay in India during proceeding financial tear is of atleast 120 days (actually he stayed for 125 days), since Mr. S is not an Indian Citizen, which is a statutory requirement.

The Limited Liability Partnership Act, 2008

Question No. 1 Dec2022 (4Marks)

What is the difference between partnership and co-ownership as per The Indian Partnership Act, 1932?

Answer:

Difference between Partnership and Co-ownership:

Partnership	Co-ownership
Partnership arises out of contract	Co-ownership can arise via contract or operation of law.
Partnership arises out of a common interest	Co-ownership may not necessarily arise out of common interest
A partner doesn't hold rights to transfer his/her part of share without prior consent of all the partners.	A co-owner does not seek permission to transfer his/her share.
A partner cannot claim partition of the property or shares.	A Co-owner can claim partition for the part of property owned by them.
The profit and loss sharing in a partnership is likely but based on a contract.	A Co-ownership may not arise out of profitability

Question No. 2 May2018 (5 Marks)

What are the essential elements to form a LLP in India as per the LLP Act, 2008?

Answer

Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. Thus, it is a hybrid between a company and a partnership.

Essential Elements to in Corporate LLP:
Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

(i) To complete and submit for incorporation documents with Registrar electronically
(ii) To have atleast two partner for incorporation (whether individual or body corporate).
(iii) To have a registered office in India to which all communication will be made.
(iv) To appoint minimum two individuals as designated partner who will be responsible for number of duties. Atleast one of them should be resident in India.
(v) Designated partner (s) should hold a Designated Partner Identification Number (DPIN) allotted by MCA
(vi) To execute a partnership deed agreement between and partner inter se of between the LLP and its partner.
(vii) Decide upon LLP name.
LLP are body corporate and hence must be registered with Registrar of LLP.

Question No. 3 Nov2018 (5 marks)

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

Answer:

The essential elements to incorporate LLP are:

(i) To complete and submit incorporation document in the form prescribed with the registrar electronically,
(ii) To have at least two partners for incorporation of LLP (individual or body corporate);
(iii) To have registered office in India to which all communications will be made and received;
(iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of the should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA
(vi) To execute a partnership agreement inter se or between the LLP and its partners in the absence of any agreement the provisions as set out in first schedule of LLP Act, 2008 will be applied.
(vii) LLP Name
Limited liability Partnerships are bodies corporate and must be registered with the Registrar of LLP after following the provisions specified in the LLP Act.

Question No. 5 June2019 (5 Marks)

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

Answer:

A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
LLP provides the benefits of limited but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. Owing to its flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprise and for investment by venture capital.
LLP is a hybrid between a company and partnership:
Some features/advantages of LLP are:

1. It is organized and operates on the basis of agreement.
2. It provides flexibility without imposing detailed legal and procedural requirements.
3. Easy to form
4. All partners enjoy limited liability.
5. It has a flexible capital structure.
6. It is easy to dissolve.

Question No. 6 Nov2019 (5 Marks)

Discuss the conditions under which LLP will be liable and not liable for the acts of the partner

Answer:

A Limited Liability Partnership, popularly known as LLP combines the advantage of both the company and Partnership into a single form of organization.
In an LLP one partner is not responsible or liable for another partner's misconduct or negligence. Every partner of an LLP would be, for the purpose of the business of the LLP, an agent of the LLP but not of the other partners. Liability of partners shall be mad except in case of unauthorized acts, fraud and negligence. But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of the limited liability partnership whether in a contract or otherwise, is solely

the obligation of the LLP. The liabilities of LLP shall be met out of the property of the LLP.
1. With Intent to defraud creditors or any other person, or
2. For any fraudulent purpose.
The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for al or any of the debts or other liabilities of the LLP.

Question No. 7 Nov2020 (5 Marks)

State the circumstances under which LLP may be wound up by the Tribunal under the Limited Liability Partnership Act, 2008.

Answer:

The winding up of a LLP may either be voluntary or by the Tribunal and LLP such wounded up may be dissolved. (Section 63)
LLP may be wounded up by the Tribunal (Section 64) in following circumstances:
(a) If the LLP decides that LLP be wounded up by the Tribunal.
(b) For a period of more than six months, the number of partners of LLP is reduced below two.
(c) If the LLP is unable to pay its debts
(d) If the LLP has acted against the interests of the sovereignty and integrity of India.
(e) If the LLP made a default in filing with the Registrar the statement of Account and solvency for five consecutive financial years
(f) If the tribunal is of the opinion that it is just and equitable that LLP may be wounded up.

Question No. 8 Jan2021 (5 Marks)

State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Answer:

Unlimited liability in case of fraud (Section 30 of LLP Act, 2008):
(1) In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose

- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose
- shall be unlimited for all or any of the debts or other liabilities of the LLP.
  However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with:

- imprisonment for a term which may extend to 2 years and
- with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs.

(3) Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.
However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Question No. 9 July2021(5 Marks)

Limited Liability Partnership (LLP) gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other. Discuss.

Answer:

1. Limited Liability Partnership means a partnership formed and registered under the LLP Act.
   It is a hybrid form of business organization structure which combines the advantages of both
   - the corporate form of organization
   - the partnership firm
2. It is viewed as an alternative corporate business vehicle which provides its partners the benefits of limited liability at low cost compliance and at the same time flexibility of running the business as per traditional partnership structure.
3. LLP since is a separate legal entity is will be fully liable for all its liabilities to the extent if all its assets but the liability of the partner will be limited up to their agreed contribution only i.e. limited liability.
4. Due to the greater flexibility in its structure and operation LLP is suitable and most viable business form for small enterprises and investment by venture capitalists and other risk investor.

Question No. 10 Dec2021 (5 Marks)

State the rules regarding registered office United Liability Partnership (LLP) and change therein as per Limited Liability Partnerships Act, 2008.

Answer:

Rules regarding the registered office of LLP and change therein (Section 13):

(1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received
(2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed
(3) A LLP may change the place of its registered office and file the notice of such change with the registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
(4) If the LLP contravenes any provisions of this section, the LLP and its every partners shall be punishable with fine which shall not be less than ₹ 72,000 but which may extend to ₹ 25,000.

Question No. 11 June2022 (5 Marks)

Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008.

Answer:

Incorporation by Registration

(a) After filing of incorporation document and the declaration form issued by a professional engaged in incorporation of LLP, Registrar shall retain the incorporation document and within a period of 14 days:
    (i) Register the incorporation document, and
    (ii) issue a certificate of incorporation of LLP
(b) The certificate shall be signed by the Registrar and authenticated by his official seal
(c) The certificate shall be conclusive evidence that LLP is incorporated by the name specified therein.

Following are the essential elements to incorporate A LLP.

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

(1) To submit complete documents with the Registrar electronically
(2) To have atleast two partners for incorporation of LLP (i.e. individual or body corporate)
(3) To have a registered office in India to which all communications will be made and received.
(4) To appoint minimum two individuals as designated partners who will be responsible for number of duties and carrying out day to day duties/ works. Atleast one of them should be resident in India
(5) A person or nominee at body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA
(6) To execute a partnership agreement between the partners, inter se or between the LLP and its partner. In absence of any agreement the provisions as set out in first schedule of LLP Act, 2008 will be applied.
(7) LLP should have a name.

Question No. 12 Dec2022 (5 Marks)

A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership".
In line of above statement clearly elaborate the difference between LLP and LLC.

Answer:

Distinction Between LLP and LLC:

	Basis	LLP (Limited Liability Partnership)	LLC (Limited Liability Company)
(i)	Regulating Act	The LLP Act, 2008	The Companies Act, 2013
(ii)	Members/Partners	The person who contribute to LLP are known as partners of the LLP.	The person who invest the money in shares are known as members of the company.
(iii)	Internal Governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statue (i.e., Companies Act, 2013).
(iv)	Name	Name of the LLP to contain the word "limited liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co.
(v)	No. of members/partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be	Private Company: Minimum – 2 members Maximum – 200 members Public company:

		individuals/or body corporate through the nominees.	Minimum – 7 members Maximum – No such limit of the members. Members can be organizations, trusts another business form or individuals.
(vi)	Liability of members/partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
(vii)	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
(viii)	Minimum number of directors designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public Co. – 3 directors.

The Companies Act, 2013

Question No. 1 July2021 (3 Marks)

What is the main difference between a Guarantee Company and a Company having Share Capital?

Answer:

1) Company limited by shares:
   ~ In this case, the liability of members is limited to the extent of unpaid value of shares held by them.
   ~ This liability can be enforced either during the
   - life time of the company
   - winding-up of the company
2) Company Limited by Guarantee:
   (i) Guarantee Company not having Share Capital:
   ~ In this case the liability of members is limited to the extent of amount guaranteed by them.
   ~ This liability can only be enforced at the time of winding up and not during the life time of company.
   (ii) Guarantee Company having Share Capital:
   ~ In this case, the liability of members is limited to the extent of:
   (a) amount guaranteed by them and
   (b) unpaid value of shares held by them
   ~ Member can be demanded to pay call money at any time throughout the life time of the company but the guaranteed amount can be called only at the time of winding up.

Question No. 2 May2018 (6 Marks)

Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under section 8 or a private company?

Answer:

Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Rules Regarding its Membership:

1. Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a OPC/shall be a nominee for the sole member of a OPC
2. No minor shall become member or nominee of the OPC or can hold share with beneficial interest
3. No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
4. OPC is a private company in nature.
5. OPC cannot be incorporated or converted into a company under section 8 of the Act i.e. a non-profit company
6. OPC may be converted to private or public companies in certain cases.
7. Such companies cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.

Question No. 3 May2018 (3 Marks)

State the limitations of the doctrine of indoor management under the Companies Act, 2013.

Answer:

Doctrine of indoor management also known as the case of Royal British Bank Vs. Turquand's rule is an exception to doctrine of constructive notice. The doctrine says that outsider can in no way be asked to be responsible or to enquire into the internal management of the company. They can safely presume that company must have done all what it was supposed to do at its internal level.

Question No. 4 Nov2018 (6 Marks)

There are cases, where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate

Answer:

The cases on the basis of which the principle of Corporate Personality of a company can be disregarded under the Companies Act, 2013 are:

1. To determine the character of the company i.e. to find out whether company is an enemy or friend:
   In the law relating to trading with the enemy where the list of control is adopted.

2. To protect revenue/tax:
   In certain matters concerning the law of taxes duties and stamps particularly where question of the controlling interest is in issue.
3. To avoid a legal obligation:
   Where it was found that the sole purpose for the formation of the Company was to use it as a device to reduce the amount to be paid by way of bonus to workmen.
4. Formation of subsidiaries as agents:
   A company may sometimes be regarded as an agent or trustee of its members, or of another company and may therefore be deemed to have lost its individuality in four of its principal. Here the principal will be held liable for the acts of that company.
5. Company formed for fraud/improper conduct or to defeat law:
   Where the device of incorporation is adopted for some illegal or improper purpose e.g. to defeat or circumvent law, to defraud creditors or to avoid Legal obligations.

Question No. 5 June2019 (6 Marks)

What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act 2013? Mention the conditions of the issue and revocation of the licence of such company by the government.

Answer:

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to:
~ Promote the charitable objects of commerce, art, science, sports, education, research, social, welfare, religion, charity, protection of environment, etc. Such company intends to apply its profits in
~ promoting its objects and
~ prohibiting the payment of any dividend to its members.
Examples of section 8 companies are ASSOCHAM, FICCI, NATIONIA SPORTS CLUB of INDIA, etc.

Powers of Central Government to issue licence:
(i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'limited or' private limited' to its name, by issuing licence on such conditions as it deems fit.
(ii) The registrar shall on an application register such person or association as a company under this section.
(iii) On registration the company shall enjoy same privileges and obligation as of a limited company.

Revocation of license:
The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this section subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.

Before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
On revocation of the licence, the Registrar shall put 'limited' or 'private limited' against the name of the company in its register.

Question No. 6 Nov2019 (6Marks)

"The Memorandum of Association is a charter of a company" Discuss. Also explain in brief the contents of Memorandum of Association.

Answer:

The Memorandum of Association of company is in fact its charter, it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.
It defines the scope of the companies activities and its relations with the outside world. It is the charter of the company. It contains the objects to pursue which the company is formed. It lays down the scope of operations beyond which company cannot go.

Contents of Memorandum:

(a) Name Clause: The name of the company must end with the words "limited" in case of public co., or "private limited" in case of private co.
(b) Registered office clause: It mentions the State in which the registered office of the company is situated.
(c) Object Clause: The object for which the company is proposed to be incorporated and any matter considered necessary in furtherance therefore, is stated in this clause.
(d) Liability Clause: The liability of members of the company, whether limited or unlimited and also states how the liability is limited.
(e) Capital Clause: It states the amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take. A company not having share capital need not have this clause.
(f) Association Clause: It states the desire of the subscribers to be formed into a company The Memorandum shall conclude the association clause. Every subscriber to the memorandum shall take atleast one share, and shall write against his name, the number of shares taken by him.

Question No. 7 Nov2020 (6Marks)

What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013.

Answer:

Formation of companies with Charitable Objects:
(Section 8) of the company deals with the formation of a company with a charitable object

1. Licence may be granted by Central Government. It the following conditions are satisfied:
   (a) Company object is to promote Art, Commerce, Science, Religion Charity or any other useful object
   (b) Company applies its income in promoting such objects.
   (c) Company prohibits payment of any dividend to its members
2. It is not required to use the words ltd or private ltd at the end of its name even though it is a limited company.
3. It shall enjoy all privileges and be subject to all obligations of ltd. company
4. A firm may become its member
5. Company can alter its object clause in MOA or AOA only by obtaining previous approval of Central Government in writing.
6. It can convert itself into company of any kind only after complying the prescribed conditions.

Conditions for Revoking Licence by Central Government:
(a) If company contravenes any of the condition subject to which licence was issued.
(b) if affairs are conducted fraudulently.
(c) if affairs are against public interest.

On Revocation Central Government may also Direct the Company to:
(a) to wound up
(b) to amalgamate with another company registered u/s 8 if it is in the public interest.

On Revocation of Licence by Central Government:
(a) Words Ltd. or private Ltd shall be inserted at the end of the company's name
(b) Company shall cease to enjoy exemptions granted by Central Government u/s 8.
Before revocation Central Government shall give an opportunity of being heard to the company.

Question No. 8 Nov2020 (3Marks)

Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?

Answer:

Foreign Company Section 2(42) of the Companies Act, 2013:

Foreign company means any company or body corporate incorporated outside India, which:
(a) has a place of business in India, whether by itself or through agent physically or through electronic mode and;
(b) conduct any business activity in India in any manner. Thus, the companies doing business through electronic mode are also termed as foreign company and need to company with specified provision.
According to the given case, Mike Limited Company incorporated in India having liaison office at Singapore.
Thus, as it is Incorporated in India it is an Indian Company and not a foreign company.

Question No. 9 Jan2021 (6 Marks)

Explain Doctrine of 'Indoor Management' under the Companies Act, 2013. Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management".

Answer:

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. This can be explained with the help of a landmark case The Royal British Bank vs. Turquand. This is the doctrine of indoor management popularly known as Turquand Rule.

Facts of The Royal British Bank vs. Turquand
Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coal Brook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution.
A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

Exceptions to the doctrine of Indoor Management: Thus, you will notice that the aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

(a) Actual or constructive knowledge of Irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity. In Howard vs. Patent Ivory Manufacturing Co where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.
Likewise, in Morris v Kansseen, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

(b) Suspicion of Irregularity: The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore Invite inquiry. Suspicion should anise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority, Where, for example, as in the case of Anand Bihar Lal vs Dinshaw & Co the plaintiff accepted a transfer of a company's property from its accountant, the transfer was hold void. The. plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.
Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the marcy of any servant or agent who should purport to contract on their behalf."

(c) Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity. Forgery may in circumstances exclude the Turquand Rule'. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had a fixed the seal of the company and forged the signature of the two directors, issued the certificate.
The plaintiff contended that whether the signature were genuine or forged was a part of the internal management, and therefore, the company should be stopped from denying genuineness

of the document.
But it was held, that the rule has never been extended to cover such a complete forgery.

Question No. 10 July2021 (6 Marks)

Explain the classification of the companies on the basis of control as per The Companies Act, 2013.

Answer:

Classification of companies on the basis of control:

(a) Holding and Subsidiary Company:
(i) Holding Company: A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
(ii) Subsidiary Company or Subsidiary: In relation to the other company, (i.e to say the holding company), means a company in which the holding company.
~ control the composition of the Board of Directors or
~ exercises or controls more than one-half of the total voting power either
- at its own or
- together with one or more of its subsidiary companies.

(b) Associate Companies: Associate Company in relation to another company, means a company (other than subsidiary) in which other company has significant influence and includes a joint venture company.

Question No. 11 Dec2021 (6Marks)

What do you mean by the term Capital? Describe its classification in the domain of Company Law.

Answer:

The term Capital has a variety of meanings. The contributions of persons to the common stock of the company form the Capital of the company. In the domain of company law, the term 'capital in used in the following senses:

(a) Nominal or authorised or registered Capital:
This form of capital has been defined in section 2 (8) of the Companies Act, 2013. "Authorised

Capital" or "Nominal Capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
Thus, it is the sum stated in the memorandum as the capital of the Company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty. It is usually fixed at the amount, which, it is estimated. the company will need, including the working capital and reserve capital if any.

(b) Issued Capital:
Section 2(50) of the Companies Act, 2013 defines "Issued Capital" which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash. Schedule III to the Companies Act, 2013, makes it obligatory for a company to disclose its issued capital in the balance sheet.

(c) Subscribed Capital: Section 2(86) of the Companies Act, 2013 defines "Subscribed Capital" as such part of the capital which is for the time being subscribed by the members of a company. It is the nominal amount of shares taken up by the public.

(d) Called-up Capital: Section 2(15) of the Companies Act, 2013 defines "Called up capital" as such part of the Capital, which has been called for payment. It is the total amount called up on the shares issued.

(e) Paid – up Capital: Paid – up Capital is the total amount paid or creditor as paid up on shares issued. It is equal to Called up capital less Calls in arrears.

Question No. 12 June2022 (6 Marks)

Explain the 'doctrine of ultra vires under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company?

Answer:

Doctrine of Ultra-vires and its consequences-

(a) The legal phrase ultra-vires (i.e. beyond the power) in applicable only to the acts done in excess of the legal powers of the company. It denotes that the powers company are limited in nature.

(b) To an ordinary citizen, the law permits whatever does the law does not expressly forbid. But a company can do anything which is specified in its objects clause of memorandum. Memorandum also has to operate within the boundaries set by the Act.

(c) Any act done by the company which is beyond the powers not only of the direction but also of the company, then such act are
- Wholly void and in operative in law and
- Not binding upon the company.

(d) Company can neither be sued nor can it sue on an ultra-vires transaction.

(e) Company can be restrained from employing funds for purposes other than these specified in its memorandum, or from carrying on a trade different from the what it is authorised to do.

(f) A person who is coming to deal with the company, must know about the powers of the company by going through its memorandum. As the memorandum in a public document, it is open for public inspection.
(g) Even after this, if anyone enters into an ultra-vires transaction with the company, then they cannot enforce it against the company.
(h) An ultra-vires transaction can never be made binding on the company. It cannot be made ultra-vires, even if whole body of shareholder ratifies it.
(i) Ratification of ultra – vires acts
(i) An act that is ultra – vires the company cannot be ratified even with the help of the unanimous consent of all the shareholder.
(ii) An act ultra-vires the Articles can be ratified by alerting the Articles by passing a special resolution in general meeting
(iii) An act ultra-vires the directors but intra-vires the company can be ratified with the help of resolution in general meeting.
(iv) Shareholders can ratify the irregularity but only such which is within the powers of the company.

Question No. 13 Dec2022 (2Marks)

Explain listed company and unlisted company as per. the provisions of The Companies Act, 2013.

Answer:

Listed Company: As per the definition given in the Section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Unlisted Company: Unlisted company means a company other than listed company.

Question No. 14 Dec2022 (3Marks)

Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of The Companies Act, 2013? Also explain the meaning of foreign company.

Answer:

Provision/Meaning of the foreign company:
According to Section 2(42) of Companies Act, 2013 foreign company means any company or body corporate incorporated outside India which:

1. Has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
2. Conducts any business activity India having in any other manner.

In the present 'case Mike LLC is incorporated in Singapore and is having its control and management from Pune, India, hence, Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013.

Question No. 15 May2018 (4 Marks)

Ravi Private Limited has borrowed 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?

Answer:

When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultra- vires the company, and hence null and void. This is known as "Doctrine of ultra-vires".
The impact of the doctrine of ultra-vires is that a company can neither be sued on an ultra-vires transaction, nor can sue on it. If you enter into a transaction which is ultra-vires the company, you cannot enforce it against the company.
If you have lent money to the company on such a transaction, you cannot recover it from the company. But, if the money has not been expended, then lender may bring an injunction order on the Co. to stop it from parting from it. This is because company does not becomes owner of it. However, if the money has been used, then lender slips into the shoes of the debtor paid - off and consequently can recover his loan to that extent.
In the given case, the transaction is ultra-vires and hence the company Ravi Private Limited is not liable to pay the debt. Mudra Finance Ltd. may being injunction order on Ravi Pvt. Ltd. to stop it from parting with the funds.

Question No. 16 Nov2018 (4Marks)

A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31 March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development; some

members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

Answer:

According to the facts of this case there exists a situation in which certain members of a Section 8 company have approached a person for seeking relevant and informed advice on the amount of dividend that can be distributed amongst them from the pool of profits made over a financial year by a company registered under Section 8.
The first and foremost thing in this case that such members need to be educated about is the definition and objects of a Section 8 company which clearly states that a Section 8 company is formed to promote the charitable object of commerce, art, science, sports education, research, social welfare, religion, charity, protection of environment, etc, and a section 8 company intends to apply its profit in- (1) promoting its objects (2) - prohibiting the payment of any dividend to its members.
Now when it is clearly evident that a section 8 company is not statutorily bound to pay dividends to its members unlike a public or private company then automatically the demand of the members for dividend stands invalid and cannot be enforced on the company.

Question No. 17 Nov2018 (3Marks)

Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company.
Analyse the situation and decide whether Mr. X is free from his liability.

Answer:

In this case according to the facts provided it is clearly observable that the situation points towards the applicability of the Doctrine of Indoor Management in relevance to the affairs of the company M/s ABC Lim According to the terms of the Doctrine of Indoor Management if an act is authorised by the articles

or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed, Hare in this case it we view the facts from the perspective of applicability of the Doctrine.

Question No. 18 June2019 (4Marks)

Sound Syndicate ltd. a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company approached Easy Finance Ltd. a non banking finance company for a loan ₹ 25,00,000 in name of the company.
The Lender agreed and provided the above said loan. Later on Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.
Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd is correct or not?

Answer:

As per the doctrine of Indoor Management, outsiders are entitled to assume that all the detailed formalities for doing an act authorised by the articles, have been observed. Outsider, is not at all required to inquire into internal affair of the company, In case of The Royal British Bank Vs Turquand, this doctrine was clearly explained. The bond signed by the director and secretary on behalf of the company, was held to be valid and bank was not required to inquire whether any ordinary resolution was passed or not. This is the indoor Management rule, that the company's Indoor affair are company's problem.
In the given case, the articles of the company, authorise the director to borrow on behalf of the company. Mr. Liddle a director borrowed money but later on company denied its liability to repay on the pretext that no resolution was so passed and lender should have enquired about the same prior to providing the loan Held, the contention of Sound Syndicate Ltd. is not correct, as the outsider is not obligated to enquire into the internal affair of the company.

Question No. 19 June2019 (3Marks)

Popular Products Ltd. is company incorporated in India having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. And Happy products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products ltd. Another company Cheerful products

ltd, holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products ltd; Cheerful products ltd. Can Jovial Ltd, be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.

Answer:

Holding and Subsidiary companies are relative terms. A subsidiary company in relation to any other company means a company in which the holding company-

1. Controls the composition of the Board of Director, or
2. Exercises or controls more than one-half of the total share capital either at its own or together with one or more of the subsidiary companies

In the given case Jovial Ltd. is controlling the composition of the Board of Director of Popular Products Ltd, and hence it can be called as Holding Co. of Popular Products Ltd. and Popular Products Ltd., its subsidiary.

Question No. 20 Nov2019 (4Marks)

Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPG for the financial year ended 31 March, 2019 was about 2.25 Crores. Ha friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so?

Answer:

As per Companies Act, 2013 a OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
In the given case Mr. Anil formed OPC on 16th April, 2018 and turnover for first financial year ending is about 2.25 crore. He wants to voluntarily convert it into a private limited company. Held, Mr. Anil can do so as the threshold limit of turnover is crossed, thus the OPC can be converted into Private Limited Company even before expiry of two years from incorporation.

Question No. 21 Nov2019 (3Marks)

A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed?

Answer:

The facts of the given case are similar to that of "Dinshaw Maneckjee Petit", it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the private companies were a share and the corporate veil was lifted to decide the real owner of the income.
Thus, A cannot be regarded as separate from the private limited company he formed.

Question No. 22 Nov2020 (4Marks)

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth 15 Crores and issued Non-Convertible Debentures worth 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is 100 Crores and Non- Convertible Debentures Stands at 120 Crores.
Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

Answer:

Associate Company:

Section 2(6) of the Companies Act, 2013:
Associate company in relation to another company means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Significant influence means control of atleast 20% of the total share capital of a business decisions under an agreement.
In the given case, ABC Ltd. is not an associate company. We will ignore the non-convertible portion and we will see the convertible portion which is also not stated thus we will do (15/100) x 100 = 15% Thus not touching 20% hence, it is not an associate company.

Question No. 23 Jan2021(4 Marks)

ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

Directors and their relatives	**190**
Employees	**15**
Ex-employees (shares were allotted when they were employees)	**20**
Others (Including 10 joint holders holding shares jointly in the name of father and son)	**20**

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion.

Answer:

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred. However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.
It is further provided that –

(A) Persons who are in the employment of the company; and
(B) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be embers after the employment ceased,

Shall not be included in the number of members.

In the instant case, Total No. of Members of ABC Ltd. will be counted as follow:

1. Directors & their relatives – 190
2. Others (10 Couple) (10x1)- 10

200

Since No. of member do not exceed 200. Therefore, there is no need for reduction in the number of members.

Question No. 24 Jan2021(3Marks)

SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each, 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant

provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.

Answer:

Legal Provision - As per Section 2(45) of Companies Act, 2013 Government company means any company in which not less than 51% of the paid-up share capital is held by-

1. the Central Government, or
2. by any State Government or Governments, or
3. partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

Facts: Here in the given problem out of 6 Lac equity shares of SK Infrastructure Ltd. 3,20,000 (2,00,000 + 1,20,000) shares are with the Central Govt. and Govt. of Maharashtra which is more than 51% of the paid up share capital of SK Infrastructure Ltd.
Conclusion: Applying the above legal provision we can say, SK Infrastructure Ltd. is a Government Company.

Question No. 25 July2021 (4 Marks)

Y incorporated a "One Person Company (OPC)" making his sister Z as nominee. Z is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said OPC. Taking into considerations the provisions of The Companies Act, 2013 answer the questions given below:

1. **Is it mandatory for Z to withdraw her nomination in the said OPC, if she is leaving India permanently?**
2. **Can Z continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage?**

Answer:

As per the provisions of Companies Act, 2013, "Only a person Resident in India is allowed to become and carry on as a nominee of OPC. "If a person stays in India for a period of not less than 182 days during the immediately preceding financial year, then he becomes resident in India.

In the given case we can conclude as follows:

1. Since, in this case 'Z' is leaving India permanently, she will no more hold a residential status. Thus, it is mandatory for 'Z' to withdraw her nomination in the OPC.

2. In this case, since 'Z' is able to maintain her residential status in India even after her marriage. Thus, Z can carry on her nomination in the said OPC.

Question No. 26 Dec2021 (4Marks)

AK Private Limited has borrowed ₹ 36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is ₹ 30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

Answer:

When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultra- vires the company, and hence null and void. This is known as “Doctrine of ultra vires".
The Impact of the doctrine of ultra vires is that a company can neither be sued on an ultra-vires transaction, nor can sue on it. If an individual enter into a transaction which is ultra vires the company, he/she cannot enforce against the company.
If an individual have lent money to the company on such a transaction, He/ She cannot recover it from the company. But if the money has not been expended, then lender may bring an injunction order on the company to stop it from parting from it. This is because company does not become owner of it.
However, if the money has been used, then lender slips into the shoes of the debtor paid -off and consequently can recover his loan to that extent. In the given case, the transaction is ultra vires and hence the company AK Private Limited is not liable to pay the debt. BK Finance Limited may being injunction order on AK Pvt. Ltd. to stop it from parting with the funds.

Question No. 27 Dec2021 (3Marks)

BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹10 each fully paid).
Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?

Answer:

Holding and subsidiary companies are relative terms. A subsidiary company in relation to any other company means a company in which the holding company-

1. Controls the composition of the board of director, or
2. Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

In the given case BC Ltd. is controlling the composition of the board of director of PQ Ltd. and KL Pvt. Ltd. and hence it can be called as holding company.
If KL Pvt. Ltd. holds 160,000 shares in PQ Ltd. no shares are held by BC Pvt. Ltd. then KL Pvt. Ltd. will be the holding company of PQ Pvt. Ltd. and PQ Pvt. Ltd. will be subsidiary company of KL Pvt. Ltd.

Question No. 28 June2022 (4Marks)

The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed ₹18 Lakhs in name of the company from Quick Finance Limited, a non- banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan. Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013?

Answer:

According to the doctrine of Indoor management:

(a) Outsider are safely entitled to assume that everything has been done properly, as far as the internal compliance and procedures by the company are concerned.
(b) In other words, we can say that this doctrine says that everything that was required to be done by the company, will be assumed by the outsiders to have been done properly. This doctrine aims to protect the outsider against the company.
In the above case, Quick Finance Ltd. which is an outsider, hence, it need not enquire whether the necessary resolution was passed properly or not by the company. Even it no resolution was actually passed for authorizing the loan, company would be held liable to repay the loan.

In the light of above, we can say that contention of Aarna Ltd, is not correct.

Question No. 29 Dec2022 (4 Marks)

Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on the leave.
Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ₹ 1,50,000/-.
Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt. The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of The Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

Answer:

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company for instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.
The Doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.
In the given question, Mr. R has made payment to Mr. C and he (Mr. C) gave the receipt of the same to Mr. R.
Thus, it will be rightful on part of Mr. R to assume that Mr. C was also authorised to receive money on behalf of the company.
Hence, Mr. R will be free from liability for payment of goods purchased from MNO Private Limited, as he has paid amount due to an employee of the company.
It is affirmed means the answer would be different if a receipt under the company seal was not issued by Mr. C after receiving payment.
In this situation the company will be held liable and Mr. C can not escape from the liability.

Question No. 30 Dec2022 (4Marks)

Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of The Companies Act, 2013.

Answer:

As per the provisions of sub-rule (7) of Rule 3 of the Companies (Incorporations) Rules, 2014, an OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except threshold limit (paid up share capital) is increased beyond 50 lakh rupees or it's average annual turnover during the relevant period exceeds 2 crore rupees.
In the instant case, Mr. Anil formed an OPC on 16 April 2018 and its turnover for the financial year ended 31" March, 2019 was ₹ 2.25 crores. Even though 2 years have not expired from the date of its incorporation, since its average annual turnover during the period starting from 16th April, 2018 to 31 March, 2019 has exceeded ₹ 2 crores, Mr. Anil can convert the OPC into a private limited company along with Sunil.