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IMPORTANT CASE STUDY QUESTIONS WITH SUGGESTED ANSWERS



About the faculty

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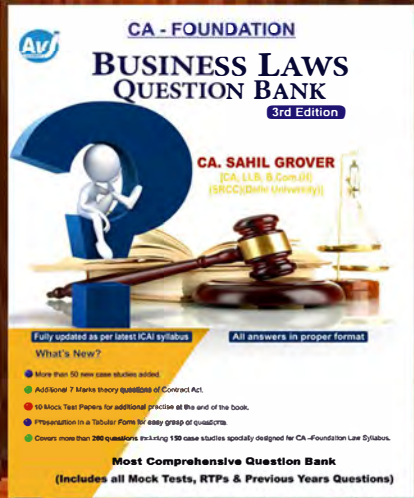
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THE INDIAN CONTRACT ACT, 1872

QUESTION 1.	<i>Father promised to pay his son a sum of Rs. one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.</i>
ANSWER	<p>Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10.</p> <p>According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced.</p> <p>This principle has been laid down in the case of Balfour vs. Balfour.</p> <p>Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs.1 lakh from father for the reasons explained above.</p>
QUESTION 2.	<i>Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.</i>
ANSWER	<p>Invitation to offer</p> <p>The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. 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.</p> <p>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.</p> <p>In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [<i>Pharmaceutical society of Great Britain V. Boots Cash Chemists</i>].</p>
QUESTION 3.	<i>A sends an offer to B to sell his second-car for Rs. 40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?</i>
ANSWER	<p>Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance.</p> <p>So in the given problem, if B remains silent, it does not amount to acceptance.</p>

	The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract. (<i>Ramsgate Victoria Hotel (v) Montefiore</i>).
QUESTION 4.	<p>Examine what is the legal position, as to the following:</p> <p>i. M offered to sell his land to N for Rs.28,000/-. N replied purporting to accept the offer and enclosed a cheque for Rs.8,000/-. He also promised to pay the balance of Rs.20,000/- in monthly installments of Rs. 5,000/- each.</p> <p>ii. A offered to sell his house to B for Rs.10000/-. B replied that he can accept the house for only Rs.8,000/-. A rejected B's counter offer to buy the house for Rs.8,000/-. B later changed his mind and is now willing to buy the house for Rs.10,000/-</p>
ANSWER	<p>To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. 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.</p> <p>Further when a 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.</p> <p>With the above rules in mind, we may note that the following is the solution to the given problems:</p> <p>i. It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of <i>Neale vs. Merret</i>, where M offered to sell his land to N for Rs. 28,000/-. N replied purporting to accept the offer but enclosed a cheque for Rs.8,000/- only. He promised to pay the balance of Rs.20,000 by monthly installments of Rs. 5,000. It was held that N could not enforce his acceptance because it was not an unqualified one.</p> <p>ii. This problem is similar to the facts of <i>Union of India v. Bahulal</i> case, wherein A offered to sell his house to B for Rs.10,000/-, to which B replied that, "I can pay Rs. 8,000 for it". Consequently, the offer of 'A' is rejected by 'B' as the acceptance is not unqualified. But when B later changes his mind and is prepared to pay Rs.10,000/-, it becomes a counter offer and it is up to A whether to accept it or not.</p>
QUESTION 5.	<i>Mr. U offered to sell his house to Mr. X for Rs.15,00,000. Mr. X accepted the offer by post. On the very next day Mr. X sent a telegram revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time?</i>
ANSWER	<p>Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation.</p> <p>As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.</p>

	<p>Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.</p> <p>Referring to the above provisions</p> <ol style="list-style-type: none"> Yes, the revocation of acceptance by Mr. X (the acceptor) is valid. If Mr. U opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
QUESTION 6.	<i>A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contract Act, 1872.</i>
ANSWER	<p>Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 9 provides that based on the mode of creation of a contract it can either be an express contract or an implied contract. A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.</p> <p>On the other hand when proposal or acceptance is made otherwise than in words, the promise is said to be implied</p> <p>In the present case, when a coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so, an implied contract comes into picture. Thus R must pay for the services of the coolie.</p>
QUESTION 7.	<i>Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs.2,000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise to B and executed in his favour an agreement to give effect to the stipulation. A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of A is valid?</i>
ANSWER	<p>Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person.</p> <p>In view of the clear language used in definition of 'consideration' in Section 2(d) "... the promisee or any other person....", it is not necessary that consideration should be furnished by the promisee only.</p> <p>A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the <u>Chinnaya Vs. Ramayya</u> held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.</p>

	<p>In the given problem, Mr. Singh has entered into a contract with A, but Mr. B has not given any consideration to A but the consideration did flow from Mr. Singh to A and such consideration from third party is sufficient to enforce the promise of A, the daughter, to pay an annuity to B.</p> <p>Thus the contention of A is incorrect</p>
QUESTION 8.	<p><i>Mr. Ramesh promised to pay Rs.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</i></p>
ANSWER	<p>Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. No consideration, no contract is a general rule.</p> <p>However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and binding.</p> <p>Agreement made on account of natural love and affection: Section 25 (1) provides that if an agreement is</p> <ul style="list-style-type: none"> (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, <p>it will be enforceable at law even if there is no consideration.</p> <p>In the instant case Mr Ramesh made a written agreement with his wife to pay her Rs 50,000 and also registered the agreement under the law. The said agreement though not supported by any consideration from the wife's side is still a valid and enforceable contract as it falls with the exception covered under Section 25(1) discussed above.</p> <p>Thus Mrs.Lali will succeed in recovering the amount from her husband.</p>
QUESTION 9.	<p><i>Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for Rs.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 October, 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th October, 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.</i></p> <p><i>Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed.</i></p> <p><i>Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal 's plan of action?</i></p>
ANSWER	<p>Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'.</p> <p>Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if</p>

	<p>there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.</p> <p>The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.</p> <p>In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.</p> <p>Moreover, it is provided in the law that “in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.”</p> <p>In such a case, third party to a contract can file the suit although it has not moved the consideration. Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.</p>
QUESTION 10.	<p><i>Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of Rs.1 lakh from Suresh for the payment of his college fee and agreed to pay by 30th May, 2012. Ramesh possesses assets worth Rs. 10 lakhs. On due date Ramesh fails to pay back the loan to Suresh. Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.</i></p>
ANSWER	<p>According to <u>Section 11 of the Indian Contract Act, 1872</u>, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor.</p> <p>Thus Ramesh who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose].</p> <p><u>Section 68 of the Indian Contract Act, 1872</u> however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor’s property. <u>This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity.</u></p> <p>Thus, according to the above provision, Suresh will be entitled to recover the amount of loan given to Ramesh for payment of the college fees from the property of the minor.</p>
QUESTION 11	<p><i>A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher?</i></p>

<p>ANSWER</p>	<p>Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.</p> <p>A person is <u>deemed to be in a position to dominate the will of the other</u>, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other.</p> <p>When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence.</p> <p>A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.</p> <p>In the instant case student was induced by his teacher to sell his brand new car to the teacher at a price less than the purchase price to secure more marks in the examination.</p> <p><u>The relation subsisting between a teacher and student is such that one can dominate the will of other and the transaction in this case is also unconscionable as a brand new car has been sold at a price less than purchase price. A can thus sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.</u></p>
<p>QUESTION 12.</p>	<p><i>Explain the concept of 'misrepresentation' in matters of contract.</i></p> <p><i>Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.</i></p>
<p>ANSWER</p>	<p>Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:</p> <ol style="list-style-type: none"> 1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true. 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice. 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement. <p>The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872].</p> <p><u>The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.</u></p> <p>Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [Long v. Lloyd, (1958)].</p>
<p>QUESTION 13.</p>	<p><i>Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sale his motor car for Rs. 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of</i></p>

	<p><i>petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying Rs. 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.</i></p>
ANSWER	<p>As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.</p> <p>A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.</p> <p>Exception- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.</p> <p>In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence.</p> <p><u>Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.</u></p>
QUESTION 14.	<p><i>Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of Rs.5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.</i></p>
ANSWER	<p>The problem as asked in the question is based on one of the essential elements of a valid contract as stated under Section 10 of the Indian Contract Act, 1872. read with Section 27 of the Act.</p> <p>In terms of the said section, “all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared void”. Thus, in order to be valid contract, such agreement must not be one which the law expressly declares to be either illegal or void.</p> <p>A void agreement is one which does not have any legal effect. Certain agreements such as agreements in restraint of trade, marriage, legal proceedings etc., are void agreements since they have been identified as “opposed to public policy”.</p> <p>The given instance is based on the agreement in restraint of lawful trade and profession. This agreement restricts one’s right to pursue his lawful profession. Such an agreement has been expressly declared to be void under section 27 of the Indian Contract Act, 1872 as they are opposed to public policy.</p> <p>Hence, “X” in the given case cannot recover the amount of Rs 5 lakhs promised by “Mr.Seth” because it is a void agreement and cannot be enforced by law.</p>

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QUESTION 15.	<i>'X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practising at Ludhiana. It was also agreed that during the term of agreement 'X' will not practise on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?</i>
ANSWER	<p>The problem as asked in the question is based on one of the essential elements of a valid contract as stated under Section 10 of the Indian Contract Act, 1872 read with section 27 of the Act.</p> <p>In terms of the said section, “all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared void”. Thus, in order to be valid contract, such agreement must not be one which the law expressly declares to be either illegal or void.</p> <p>A void agreement is one which does not have any legal effect. Certain agreements such as agreements in restraint of trade, marriage, legal proceedings etc., are void agreements since they have been identified as “opposed to public policy”. The given instance is based on the agreement in restraint of lawful trade</p> <p>Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.</p> <p><u>However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.</u></p> <p>In the instant case, agreement entered by X with Y is reasonable, and do not amount to restraint of trade and hence enforceable.</p> <p><u>Therefore, X can be restrained by an injunction from practicing on his own account in Ludhiana.</u></p>
QUESTION 16.	<i>M promised to pay N for his services at his (M) sole discretion found to be fair and reasonable. However, N dissatisfied with the payment made by M and wanted to sue him. Decide whether N can sue M under the provisions of the Indian Contract Act, 1872?</i>
ANSWER	<p>As per section 29 of the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void”.</p> <p>The parties to the contract should be aware of the precise nature and scope of their mutual rights and obligations under the contract. If the words used by the parties are vague and indefinite, the law cannot enforce the agreement.</p> <p>In the instant case, M promise to pay N only if he finds his services to be fair and reasonable .This makes the N’s right to get the amount uncertain as the right is based on the sole discretion of M</p> <p><u>Therefore the contract in this case falls within the purview if Section 29 and is uncertain and thus void.N’s suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract.</u></p>

<p>QUESTION 17.</p>	<p><i>Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid ?</i></p> <p style="text-align: center;">OR</p> <p><i>Z rent out his house situated at Mumbai to W for a rent of Rs.10,000 per month. A sum of Rs.5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.</i></p>
<p>ANSWER</p>	<p>Section 69 of the Indian Contract Act, 1872, provides that</p> <p>"A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other"</p> <p>In order to attract Section 69 the following conditions should be satisfied:</p> <ol style="list-style-type: none"> (a) One person is legally bound to make a payment. (b) Some other person makes such payment. (c) The person making such payment is not legally bound to make such payment. (d) The person making such payment is interested in paying such amount. <p>If all the conditions of Sec. 69 are satisfied, the person who is interested in paying such amount shall be entitled to recover the payment made by him.</p> <p>In the given case Y has made the payment of lawful dues of X in which Y had an interest.</p> <p>Therefore, Y is entitled to get the reimbursement from X under Section 69 of Indian Contract Act.</p>
<p>QUESTION 18.</p>	<p><i>X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of 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.</i></p> <p><i>In the light of the Indian Contract Act, 1872, can X recover it from the Manager?</i></p>
<p>ANSWER</p>	<p>The problem asked in the question is based on the rights of the finder of goods as contained in Sections 168 & 169 of Indian Contract Act, 1872 read with section 71 of the Act.</p> <p>Section 71 lays down a circumstance in which also a quasi-contractual obligation is to be presumed. It says "A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee."</p> <p>Section 168 and 169 deal with right of the finder of goods and state that the finder of goods has the right to retain the possession of goods against everyone in the world till the true owner of the goods is found. Thus no one except the real owner can claim possession of goods from the finder.</p> <p><u>If anybody deprives him of the possession of the goods, he can file a suit for damages for trespass and recovering back the possession</u></p>

	<p>In the instant case found a wallet in a restaurant and handed it over to the manager of restaurant till the true owner is found. Now the manager refuses to return the wallet to X contending that it does not belong to X.</p> <p>Since X is the given case is the finder of goods he has the right to the possession of goods he found and he can also enforce this right against everyone in the world except the true owner of the goods.</p> <p>Thus in the given case the contention of the manager is incorrect and X can recover the wallet from the manager as he is the finder of the wallet.</p>
QUESTION 19	<i>A and B jointly took a loan of Rs 10,000 from C. A alone pays the amount to C and B, not knowing this fact, pays Rs.10,000 over again to C. Referring to the provisions of the Indian Contract Act, 1872 decide whether C bound to repay the amount to B.</i>
ANSWER	<p>Section 72 declares thus: "A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it".</p> <p>Accordingly, if one party under a mistake pays to another party money which is not due by contract or otherwise, that money must be repaid.</p> <p>In the instant case, B made the payment of Rs.10,000 to C in ignorance of the fact that A, his co-borrower has already made the payment to C and thus no amount was due to C now. Thus the payment made by B was under a mistake</p> <p>C is thus bound to return the amount of Rs 10,000 to B .</p>
QUESTION 20	<i>A received certain goods from B promising to pay Rs.10,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays, Rs.6000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of Rs. 10000/-. Can B do so? Advise.</i>
ANSWER	<p>As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.</p> <p>In the instant case, Mr B accepted a sum of Rs. 6000 from Mr C who made this payment on behalf of Mr. A. Section 41 applies to such situation as a payment has been accepted by the promisee (i.e Mr B) from a stranger (i.e. Mr C) which discharges the promisor (Mr A) to the extent of payment made even though the promisor neither authorised or knew about the payment.</p> <p>Therefore B can sue A only for the balance amount i.e. Rs.4000.</p>
QUESTION 21	<i>X, Y and Z jointly borrowed Rs.50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether: (i) Y can recover the contribution from X and Z,</i>

	<p>(ii) Legal representatives of X are liable in case of death of X, (iii) Y can recover the contribution from the assets, in case Z becomes insolvent.</p>
ANSWER	<p>Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.</p> <p>Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.</p> <p>Section 43 also deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.</p> <p>As per the provisions of above sections,</p> <ol style="list-style-type: none"> i. Y can recover the contribution from X and Z because XYZ are joint promisors. ii. Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him. iii. 'Y' also can recover the contribution from Z's assets.
QUESTION 22	<p><i>Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay Rs.1,50,000/- to 'A'. Later-on, 'F' became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'.</i></p> <p style="text-align: center;">OR</p> <p><i>'A', 'B' and 'C' are partners in a firm. They jointly promise to pay Rs.1,50,000 to 'P'. C became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. A is compelled to pay the whole amount to P. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which A can recover the amount from B.</i></p>
ANSWER	<p>The legal liability of a joint promisor, joint promisee and other connected issues are set out in <u>Sections 42, 43 and 44 of the Indian Contract Act, 1872.</u></p> <p>In terms of <u>section 42 of the Act</u> "When two or more persons have made a joint promise then unless a contrary intention appears from the contract, all such persons, during their joint lives, and after the death of any one of them, his representative jointly with the survivor or survivors and after the death of the last survivor, representatives of all jointly must fulfill the promise".</p> <p>Further, the promisee can enforce his right against any one of the joint promisor and if he does so then the rights and duties of the other promisors is to make contributions.</p> <p>In terms of <u>section 43 of the Act,</u></p>

	<p>i. when two or more persons make joint promise, the promisee can compel any one of the joint promisors to perform the whole of promise.</p> <p>ii. in the above situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.</p> <p><u>Section 44 of the Act</u>, states that in the matter of release of one of the joint promisors, it must be understood that such a release does not discharge other joint promisors nor does the released joint promisor would stand released to other joint promisor or promisors.</p> <p>Hence, in the instant case, D, E and F who are partners in a firm, jointly promised to pay Rs. 1,50,000/- to A. Later on, F became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt i.e. Rs.10,000/- (1/5th of Rs.50,000/-) (Amount to be contributed by F is Rs.50,000/- (1/3rd of Rs.1,50,000/-). A recovers the whole amount from D through a legal action.</p> <p>Here, D is entitled to receive</p> <p>a) From F's assets: Rs.10,000/- b) From E : Rs.70,000/- (Rs.50,000/- being his own share + ½ (50,000 – 10,000) i.e. Rs.20,000/- being one half share of total loss of Rs.40,000/- due to F's insolvency).</p> <p>Thus, in the above case, under the provisions of the Indian Contract Act, 1872, D can recover Rs.70,000/- from E.</p>
QUESTION 23	<p><i>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.</i></p> <p><i>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?</i></p> <p><i>Discuss in light of the Indian Contract Act, 1872?</i></p> <p><i>(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?</i></p> <p><i>(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?</i></p>
ANSWER	<p>A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.</p> <p>(i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.</p> <p>(ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</p>

	Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.
QUESTION 24.	<p><i>Mr. Sonumal a wealthy individual provided a loan of Rs. 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for the further loan of Rs. 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1,00,000 on 28.02.2019 and remaining Rs. 50,000 on 03.03.2019.</i></p> <p><i>On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that the lender should adjust Rs. 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.</i></p> <p><i>Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.</i></p> <p><i>Now you decide:</i></p> <p><i>I Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act 1872?</i></p> <p><i>II What would be the answer in case the borrower does not insist on such order of adjustment of repayment?</i></p> <p><i>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?</i></p>
ANSWER	<p>The problem as given in the question relates to provisions regarding application/appropriation to payments as contained in sections 59 to 61 of Indian Contract Act, 1872.</p> <p>These sections contain provisions as to the manner in which the payment is to be applied when a debtor who owes several debts to the same creditor, makes a payment which is insufficient to satisfy the whole indebtedness.</p> <p>Sections 59 to 61 of the Contract Act lays down the following rules:</p> <p>1. Application of payment where debt to be discharged is indicated (Section 59):</p> <p>i. Debtor's express instructions must be followed. Appropriation is a right given to the debtor for his benefit. Thus if the debtor expressly states that the payment made by him is to be applied to the discharge of some particular debt, the creditor must act accordingly otherwise he should not accept the payment.</p> <p>ii. Debtor's implied intention must be followed. If there are no express instructions, then debtor's implied intention should be gathered from the circumstances attending the payment and appropriation must be done accordingly.</p> <p>2. Application of payment where debt to be discharged is not indicated (Section 60):</p> <p>If there is no express or implied direction by the debtor regarding appropriation, then the creditor has got the option to apply the payment to any debt lawfully due from the debtor, including a debt which is barred by the Limitation Act.</p>

	<p>3. Application of payment when neither party appropriates(Section 61):</p> <p>In terms of section 61 of the Act, where neither party appropriates-</p> <ol style="list-style-type: none"> the payment shall be applied in discharge of debts in order of time, and if the debts are of equal standing the payment shall be applied in discharge of each proportionately. <p>The above appropriation takes place whether or not the debt is barred by limitation.</p> <p>In the instant case Mr Datumal borrowed several sums from Mr.Sonumal on different dates and then makes a part payment of the loan which he wants to a be applied towards the payment of different debts as per his instruction.</p> <ol style="list-style-type: none"> In light of provisions of section 59, Mr.Datumal's contention is correct. As per Section 59 if the debtor expressly states that the payment made by him is to be applied to the discharge of some particular debt, the creditor must act accordingly. In case the borrower does not insist on such order of adjustment of repayment the provisions of Section 60 will apply. Section 60 states that if there is no express or implied direction by the debtor regarding appropriation, then the creditor has got the option to apply the payment to any debt lawfully due from the debtor, including a debt which is barred by the Limitation Act. <u>Thus in this case Mr.Sonumal the apply the amount of repayment to any debt as per his choice.</u> In case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part then the provisions of Section 61 apply which provides that where neither party appropriates- <ol style="list-style-type: none"> the payment shall be applied in discharge of debts in order of time, and if the debts are of equal standing the payment shall be applied in discharge of each proportionately. <p>The above appropriation takes place whether or not the debt is barred by limitation.</p>
<p>QUESTION 25.</p>	<p><i>Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urid Dhall on 10.11.2006 at a contracted price of Rs.40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid Dhall was sky rocketing to Rs.50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to Rs.53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.</i></p>
<p>ANSWER</p>	<p>The stated problem falls under the head 'anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872.</p> <p>Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived.</p>

	<p>In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfilment of the promise by the promisor is over.</p> <p>In case he elects not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance then he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on reconsideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract. <u>The case law applicable here is Frost vs. Knight.</u></p> <p>As per details in the problem, price as contracted Rs 40 per kg on 10.11. 2006 rose to Rs. 50 per kg as on 4.12.2006 and finally to Rs. 53 per kg, on 09.12.2006.</p> <p>The answer to the problem is that</p> <ol style="list-style-type: none"> 1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of Rs.10 per kg viz. Rs. 1,00,000. 2. He could wait till 09.12.2006 and claim Rs.1,30,000 i.e. Rs.13 per kg. <p>If the Government, in the interim period i.e. between 04.12.2006 and 09.12. 2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.</p>
QUESTION 26	<p><i>'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ Rs.5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ Rs.4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was Rs. 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. What would be the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.</i></p>
ANSWER	<p>The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872.</p> <p>Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken the party who suffers by such breach is 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 such breach or which the parties knew when they made the contract to be likely to result from the breach of it.</p> <p>The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.</p> <p>In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances.</p>

	<p>Therefore, 'X' is entitled to claim from 'Z' 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.</p> <p>If 'X' had not informed 'Z' of 'Y's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be Rs.750/- (i.e. 1000 water bottles x 0.75 paise).</p>
QUESTION 27	<p><i>M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs.11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. 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.</i></p> <p><i>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.</i></p>
ANSWER	<p>Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is 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 such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.</p> <p>Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of Rs.1.25 lakhs (i.e. Rs.12.75 minus Rs.11.50 = Rs.1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.</p> <p>Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.</p>
QUESTION 28.	<p><i>Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.</i></p>
ANSWER	<p>According to Section 56 (Para 2) of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).</p>

	<p>But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.</p> <p>The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (<i>Budget V Bennington; Jacobs V Credit Lyonnais</i>).</p> <p>In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.</p>
QUESTION 29.	<p><i>Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.</i></p> <p><i>Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period.</i></p>
ANSWER	<p>In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</p> <p>Referring to the above provision, we can analyse the situation as under:</p> <p>The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the Motor Car.</p> <p>Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.</p>
QUESTION 30.	<p><i>Mr. X and Mr. Y entered into a contract on 1st 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 Rs. 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 1st September, 2018, Mr. X claimed compensation of Rs. 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 Rs. 50,000, which he had paid as advance in terms of the contract.</i></p>

	<i>Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.</i>
ANSWER	<p><u>Subsequent or Supervening impossibility (Becomes impossible after entering into contract):</u></p> <p>When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.(Section 56)</p> <p>Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</p> <p>In the given question, after Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time.</p> <p>Thus, the promise in question became void. Further, Mr. X has to pay back the amount of Rs. 50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time.</p> <p>Hence, the contention of Mr. Y is correct</p>

THE SALES OF GOODS ACT, 1930

Question 31.	<i>M/s PREETI owned a motor car which she handed over to Mr. JOSHI on sale or return basis. After a week, Mr. JOSHI pledged the motor car to Mr. GAJESH. Ms. PREETI now claims back the motor car from Mr. GAJESH. Will she succeed" Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. PREETI.</i>
ANSWER	<p>As per the provisions of section 24 of the sale of Goods Act, 1930, when goods are delivered to the buyer on approval on 'on sale or return' or other similar terms, the property therein passes to the buyer-</p> <ol style="list-style-type: none"> When the buyer signifies his approval or acceptance to the seller. If he does not signify his approval or acceptance to the seller but retains the goods without giving notice or rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. <p>In the instant case Mr. JOSHI, after delivery of the Motor Car on sale or Return basis, pledged the Motor car to Mr. GAJESH. He has attracted the third condition referred above that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.</p> <p>Therefore, the property therein (Motor Car) passes to the Mr. JOSHI.</p> <p><u>Now in this situation, Ms. PREETI cannot claim back her Motor Car from Mr. GAJESH, but she can claim the price of the Motor Card from Mr. JOSHI only.</u></p>
QUESTION 32.	<i>Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the</i>

	<i>entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?</i>
ANSWER	<p>Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.</p> <p>Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied.</p> <p>Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.</p> <p>Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.</p> <p>a) Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.</p> <p>b) Where the bales have not been selected with the consent of buyer's representatives. In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.</p>
QUESTION 33.	<i>J the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than Rs.50, 000. The agent sells the car for Rs.40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.</i>
ANSWER	<p>The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27.</p> <p>Section 27 lays down the general rule relating to the transfer of title on sale is that "the seller cannot transfer to the buyer of goods a better title than he himself has." If the title of the seller is defective the buyer's title will also be subject to the same defect.</p> <p>However the proviso to section 27 provides an exception to this general rule and lays down that the buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:</p> <ol style="list-style-type: none"> 1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.

	<p>2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent. 3) The buyer should act in good faith. 4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.</p> <p>A mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. In the instant case, P, the agent, who was in the possession of the car with J's consent for the purpose of sale, sells it to A who buys it in good faith.</p> <p>A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.</p>
QUESTION 34.	<p><i>Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930?</i></p>
ANSWER	<p>The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in Section 12. Section 12(1) lays down that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.</p> <p>"A condition 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". [Sub-section (2)]</p> <p>"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". [Sub-section (3)]</p> <p>Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)]</p> <p>In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car.</p> <p>Ram is therefore entitled to reject the car and have refund of the price.</p>
QUESTION 35.	<p><i>For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?</i></p>
ANSWER	<p>The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in Section 16. According to Section 16, ordinarily, in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied; the rule of law being '<u>Caveat Emptor</u>', that is, <u>let the buyer beware</u>. Thus as a general rule, it is the duty of the buyer to examine the goods thoroughly</p>

	<p>before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them</p> <p>But as per section 16(1) an implied condition is deemed to exist on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, if the following conditions are satisfied:</p> <ol style="list-style-type: none"> i. The buyer, expressly or impliedly, should make known to the seller the particular purpose for which the goods are required; ii. The buyer should rely on the seller's skill or judgment; and iii. The goods sold must be of a description which the seller deals in the ordinary course of his business, whether he be the manufacturer or not. <p><u>Thus, the purpose must be made known expressly if the goods to be supplied can be used for several purposes, otherwise the condition as to fitness will not be implied and the buyer will have no right to reject the goods merely because they are unfit for the specific purpose he had in mind.</u></p> <p>In the instant case, since the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply. \</p> <p><u>Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.</u></p>
QUESTION 36.	<p><i>Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.</i></p>
ANSWER	<p>The problem is based on section 50 and 51 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller.</p> <p>Section 50 states that the right of stoppage of transit is exercisable by the seller only if the following conditions are fulfilled:</p> <ol style="list-style-type: none"> a) The seller must be unpaid. b) He must have parted with the possession of goods. c) The goods are in transit. d) The buyer has become insolvent. e) The right is subject to provisions of the Act <p>Right of stoppage in transit can be exercised only so long as the goods are in the course of transit, it becomes necessary to know as to when the transit begins and when it comes to an end. When the transit comes to an end the right of stoppage cannot be exercised.</p> <p>According to Section 51, goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.</p>

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	<p>Thus the transit continues so long as the goods are not delivered to the buyer or his agent.</p> <p>In the instant case, since the 100 bales which have sent by railway have still not been delivered to the buyer or his agent, Ram can exercise his right of stoppage in transit in respect of these goods. However in respect of 100 bales which were sent by lorry since they have been delivered to Shyam, Ram's right of stoppage of transit has come to end.</p> <p><u>Thus the claim of Shyam's official receiver in respect of 100 bales which are still in transit is incorrect.</u></p>
QUESTION 37.	<p><i>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?</i></p>
ANSWER	<p>According to section 44 of the Sales of Goods Act, 1932, 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 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. The property in the goods or beneficial right in the goods passes to the buyer at a point of time depending upon ascertainment, appropriation and delivery of goods.</p> <p>Risk of loss of goods <i>prima facie</i> follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.</p> <p>In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.</p> <p><u>Second Situation-If price has not been paid</u></p> <p>If the price of the goods would not have settled in cash and some amount would have been pending then too the answer would remain same and the damages will have to be borne by Mr.H as the property in goods has been passed to him and risk <i>prima facie</i> passes with property.</p> <p>Besides this Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:</p> <ol style="list-style-type: none"> Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

	b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].
QUESTION 38.	<i>P agrees to sell to Q his two motor cars on the terms that the price was to be fixed by R. Q takes the delivery of one car immediately. R refuses to oblige P and Q and fixes no price. P asks for the return of the car already delivered whereas Q insists on the delivery of the second car to him for a reasonable price of both the cars. Decide the case.</i>
ANSWER	<p>The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in Section 10.</p> <p>Section 10 provides that where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.</p> <p>However if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.</p> <p>In the instant case P agrees to sell two motors to Q for which price has to be fixed by R, out of which one car has been delivered to Q.</p> <p>Applying the provisions of Section 10 to the given case, when R refuses to fix the price the contract becomes void except as to the part of goods delivered and accepted by the buyer.</p> <p>Thus as regard to the car already delivered to Q, P cannot ask for its return and must accept reasonable price for that car. As regards the second car which has not been delivered, Q cannot insist on its delivery to him since the contract has become void.</p>
QUESTION 39.	<i>A sells goods to B and delivers him the document of title of goods. B pays A through a cheque. In fulfillment of contract of sale B transfers the document of title to C. Before C could obtain the delivery of goods, B's cheque has been dishonoured by the bank. Hence A gives instructions to stop delivery of the goods to C until paid. Is A's action justified?</i>
ANSWER	<p>The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in Section 53 which deals with effect of sub sale or pledge by buyer on unpaid seller's rights.</p> <p>According to section 53 the unpaid seller's right of lien or stoppage in transit is not affected by any sale or pledge of the goods which the buyer might have made.</p> <p>However there are two <i>exceptional cases</i> when these two rights of the unpaid seller are affected by a sale or pledge of the goods by the buyer. These exceptions are:</p> <ol style="list-style-type: none"> i. When the seller has assented to the sale or pledge which the buyer may have made. ii. When a document of title to goods (<i>e.g.</i>, a bill of lading or railway receipt) has been issued or transferred to a buyer, and the buyer transfers the document to a person who takes the document in good faith and for consideration, then, <ol style="list-style-type: none"> (a) if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and (b) if such last mentioned transfer was by way of pledge, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the pledgee

	<p>In the instant case A sells goods to B and delivers him the document of title which are in turn transferred to C who takes them in good faith. When the cheque given to A is dishonored he becomes an unpaid seller and thus he gets rights of unpaid seller like lien, stoppage in transit, resale etc.</p> <p>However by virtue of proviso to section 53 discussed above he cannot exercise these rights against C who takes delivery of document of title of goods in good faith and for good consideration.</p> <p>Thus in the given case A's action to stop delivery of goods to C is not justified.</p>
<p>QUESTION 40.</p>	<p><i>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.</i></p> <p><i>Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the 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.</i></p> <p><i>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.</i></p> <p><i>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></p> <p><i>i. Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".</i></p> <p><i>ii. Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?</i></p>
<p>ANSWER</p>	<p>(i)</p> <p>Duty of the buyer according to the doctrine of "Caveat Emptor":</p> <p>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.</p> <p>Duty of the seller according to the doctrine of "Caveat Emptor":</p> <p>The following exceptions to the Caveat Emptor are the duties of the seller:</p> <ol style="list-style-type: none"> 1. Fitness as to quality or use 2. Goods purchased under patent or brand name 3. Goods sold by description 4. Goods of Merchantable Quality 5. Sale by sample 6. Goods by sample as well as description 7. Trade usage 8. Seller actively conceals a defect or is guilty of fraud

	<p>(ii)</p> <p>As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]</p>
QUESTION 41.	<p>Suraj sold his car to Sohan for Rs.75,000. After inspection and satisfaction, Sohan paid Rs.25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.</p>
ANSWER	<p>As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that</p> <ul style="list-style-type: none"> (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)]. (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)]. <p>This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:-</p> <ul style="list-style-type: none"> (1) Interest on the remaining amount (2) Interest during the pendency of the suit. (3) Costs of the proceedings
QUESTION 42	<p><i>A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?</i></p>
ANSWER	<p>The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods. This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer.</p> <p>This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-</p> <ul style="list-style-type: none"> 1. The buyer has not paid the total price to the seller 2. The seller has delivered the goods to a carrier thereby losing his right of lien 3. The buyer has become insolvent 4. The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)

	<p>In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this, the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.</p> <p>According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods</p>
QUESTION 43	<p><i>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 Rs.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.</i></p> <p><i>The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.</i></p> <p><i>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.</i></p> <p><i>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?</i></p> <p><i>Explain the basic law on sale by sample under Sale of Goods Act 1930?</i></p> <p><i>Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930?</i></p> <p><i>What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?</i></p>
ANSWER	<p>The problem asked in the question is based on the provisions of Sections 15 and 17 Sales of Goods Act, 1930. These sections deal with implied conditions which are presumed by law to exist in every contract of sale.</p> <p>A 'condition' is a stipulation <i>essential</i> to the main purpose of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself [Sec. 12(2)]. 'Condition' forms the very basis of a contract of sale, the breach of which causes irreparable damage to the aggrieved party so as to entitle him even to repudiate the contract.</p> <p>There are some conditions which are presumed by law to be present in the contract. Sec 17 deals with one such condition which is applicable in case of sale by sample.</p> <p>Section 17 provides that</p> <p>When under a contract of sale, goods are to be supplied according to a sample agreed upon, the implied conditions are:</p> <ol style="list-style-type: none"> i. that the bulk shall correspond with the sample in quality; ii. that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; iii. that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. In other words, there should not be any latent defect in the goods. If the defect is patent one, that is, easily discoverable by the exercise of ordinary care, and the buyer takes delivery after inspection, there is no breach of implied condition and the buyer has no remedy. <p>Section 15 deals with an implied condition which applies in case of sale by sample and description.</p>

	<p>It provides that</p> <p>When goods are sold by sample as well as by description, there is an implied condition that the bulk of the goods shall correspond both with the sample and with the description. <u>If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer is entitled to reject the goods.</u> The bulk of the goods must correspond with both.</p> <p><i>The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.</i></p> <p>In the instant case Mrs. Geeta bought the goods by sample and she was allowed to inspect/examine the sample. The bulk corresponded with the sample and that no hidden or latent defect. Thus Mrs. Geeta cannot file suit of fraud against shopkeeper.</p> <p>Her contention is incorrect and she has no remedy against the shopkeeper under the law.</p> <p>If Mrs. Geeta has specified the exact requirement as to the length of the rice the condition as to sale by description as contained in Section 15 applies. It is now the duty of the shopkeeper to give her rice as per her required description. If the rice supplied to her is not as per the description she is not bound to accept and pay for them.</p>
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THE INDIAN PARTNERSHIP ACT, 1932

QUESTION 44.	<p><i>A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.</i></p> <p><i>What will be your advice in case M was having knowledge about the agreement?</i></p>
ANSWER	<p>According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.</p> <p>Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.</p> <p>The implied authority of a partner may be extended or restricted by contract between the partners.</p> <p>Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:</p> <ol style="list-style-type: none"> 1. The third party knows about the restrictions, and 2. The third party does not know that he is dealing with a partner in a firm.

	<p>In the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role. M also is aware that he is dealing with a partner in a firm.</p> <p>Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm.</p> <p>But in the second situation, since M was having knowledge about the agreement, he cannot recover money from the firm.</p>
QUESTION 45.	<p><i>A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?</i></p> <p style="text-align: center;">OR</p> <p><i>P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?</i></p>
ANSWER	<p>As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.</p> <p><u>The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,</u></p> <p>(a) the suit must be instituted by or on behalf of the firm which had been registered; (b) the person suing had been shown as partner in the register of firms.</p> <p><u>In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable as the suit is instituted in name of firm and the names of B and C shown as partners in register of firms</u></p> <p>Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.</p> <p><u>Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms</u></p>
QUESTION 46.	<p><i>A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?</i></p>
ANSWER	<p>Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the</p>

	<p>contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.</p> <ol style="list-style-type: none"> 1. Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or 2. Interest at the rate of 6 per cent annum on the amount of his share in the property. <p>Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:</p> <ol style="list-style-type: none"> a) the 20% shares of profits (as per the partnership deed); or b) interest at the rate of 6 per cent per annum on the amount of A's share in the property
QUESTION 47.	<p><i>Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932.</i></p>
ANSWER	<p>The problem in this case is based on the provisions of The Indian Partnership Act, 1930 contained in Section 33 which deals with expulsion of partner from the firm.</p> <p>Section 33 provides that a partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.</p> <p>Thus it is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932.</p> <p><u>The essential conditions before expulsion can be done are:</u></p> <ol style="list-style-type: none"> 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. <p>The test of good faith includes:</p> <ol style="list-style-type: none"> a) that the expulsion must be in the interest of the partnership; b) that the partner to be expelled is served with a notice; and c) that the partner has been given an opportunity of being heard. <p>Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.</p>
QUESTION 48.	<p><i>Sohan, Rohan and Jay were partners in a firm. The firm is dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2018, one of the partners, Mr. Jay died in a road accident. The firm has ordered M/s AB and Co. to supply the furniture for their business on 25 May 2018, when Jay was also alive.</i></p> <p><i>Now Sohan and Rohan continue the business in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25 July 2018. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm?</i></p> <p style="text-align: center;">OR</p>

	<p><i>Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.</i></p> <p><i>Explain with reasons:</i></p> <p><i>(i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?</i></p> <p><i>(ii) Against whom can the creditor obtain a decree for the recovery of the price?</i></p>
ANSWER	<p>The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35.</p> <p>The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the <u>estate of a deceased partner is not liable for any act of the firm done after his death.</u></p> <p>Further, 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.</p> <p>In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner.</p> <p>This is because there was no debt due in respect of the goods in Jay's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.</p>
QUESTION 49.	<p><i>A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:</i></p> <p><i>(i) Whether the Firm's contention shall be tenable?</i></p> <p><i>(ii) What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware?</i></p>
ANSWER	<p>The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 and Section 27 of the Indian Partnership Act, 1932.</p> <p>Section 19(1) provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority'</p>

	<p>Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.</p> <p>Further Section 27 provides where-</p> <ol style="list-style-type: none"> a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss. <p>Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:</p> <ol style="list-style-type: none"> The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods. In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm. <p>In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.</p>
QUESTION 50.	<p><i>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.</i></p> <p><i>In the lights of the Indian Partnership Act, 1932, explain</i></p> <ol style="list-style-type: none"> <i>To what extent X will be liable if he failed to give public notice after attaining majority?</i> <i>Can Mr. L recover his debt from X?</i>
ANSWER	<p>The problem given in the question relates to Section 30 of Indian Partnership Act, 1932. Section 30 of the Partnership Act thus provides that though a minor cannot be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership</p> <p>Before attaining majority the liability of the minor is confined only to the extent of his share in the profits and the property of the firm. Minor has no personal liability for the debts of the firm incurred during his minority.</p> <p>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. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.</p> <p>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:</p>

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	<p>a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.</p> <p>b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.</p> <p>In the instant case Master X was introduced to the benefits of firm and he on attaining majority didn't within 6 months give a public notice as to whether he has elected to become or not to become partner in the firm. Mr L, a supplier of the firm has now filed a suit to recover a debt from the firm.</p> <p>Based on the above stated provisions of law follows conclusions can be drawn:</p> <p>(i) Since X has not given public notice even after the expiry of six months of his attaining majority he shall become the partner of the firm on the expiry of six months and consequently he becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership</p> <p>(ii) Since X becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership Mr L can recover his debt from X</p>
QUESTION 51.	<p><i>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?</i></p>
ANSWER	<p>The problem in the question is based on the provisions of section 33 of Indian Partnership Act, 1930 which deals with expulsion of partner from the firm</p> <p>According to Section 33 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:</p> <p>(i) the power of expulsion must have existed in a contract between the partners;</p> <p>(ii) the power has been exercised by a majority of the partners; and</p> <p>(iii) it has been exercised in good faith.</p> <p>If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.</p> <p>The test of good faith as required under Section 33(1) includes three things:</p> <ul style="list-style-type: none"> • The expulsion must be in the interest of the partnership. • The partner to be expelled is served with a notice. • He is given an opportunity of being heard. <p>If a partner is otherwise expelled, the expulsion is null and void.</p>

	<p>In the instant case Y was expelled from the partnership without giving him a notice and on a ground which doesn't seem to be interest of partnership.</p> <p><u>Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.</u></p>
QUESTION 52.	<p><i>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 office of the firm 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 to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth Rs.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.</i></p> <p><i>Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.</i></p>
ANSWER	<p>The problem in the question is based on the provisions of section 35 of Indian Partnership Act, 1930 which deals with death of a partner and the continuation of business by the remaining partners. Generally, 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 partners. 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.</p> <p>In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner.</p> <p>Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.</p>
QUESTION 53.	<p><i>Mr. M, Mr. N and Mr. P were 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.</i></p>

	<i>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.</i>
ANSWER	<p>The problem in the question is based on the provisions of section 32 of Indian Partnership Act, 1930 read with Section 28 of Indian Partnership Act.</p> <p>SECTION 32 lays down 'A partner may retire:</p> <p>(a) with the consent of all the other partners;</p> <p>(b) in accordance with an express agreement by the partners; or</p> <p>(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.</p> <p>Further Section 32(3) states that <u>a retiring partner also continues to be liable for the acts of the firm, even after retirement, until public notice is given of the fact of retirement.</u> Similarly, the partners of the reconstituted firm continue to be liable for the acts of the retired partner though done after retirement, until public notice is given of the retirement. Such a public notice may be given either by the retiring partner or by any partner of the reconstituted firm. [Sec 32(4)]</p> <p>If the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.</p> <p>Section 28 lays down where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.</p> <p>In the given case P retired from the firm without giving a public notice. Moreover the visiting card that was given to the supplier clearly still contains the name of Mr. P as the partner of the firm. In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.</p>
QUESTION 54.	<p><i>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 August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.</i></p> <p><i>(i) Examine whether action by the partners was justified or not?</i></p> <p><i>(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?</i></p>
ANSWER	<p>Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):</p> <p>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.</p> <p>The test of good faith as required under Section 33(1) includes three things:</p> <ul style="list-style-type: none"> • The expulsion must be in the interest of the partnership. • The partner to be expelled is served with a notice. • He is given an opportunity of being heard. <p>If a partner is otherwise expelled, the expulsion is null and void.</p>

	<p>i. Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.</p> <p>ii. The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:</p> <ol style="list-style-type: none"> the power of expulsion must have existed in a contract between the partners; the power has been exercised by a majority of the partners; and it has been exercised in good faith.
QUESTION 55.	X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advise Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.
ANSWER	<p>In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).</p> <p>Partner by holding out (Section 28):</p> <p>Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.</p> <p>It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.</p> <p>It must also be noted that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.</p> <p>The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, gives credit to the firm on the belief that he was a partner, will be entitled to hold him liable.</p>
QUESTION 56.	<i>Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.</i>
ANSWER	<p>The problem in the question is based on the provisions of Section 19 read with Section 22 of Indian Partnership Act, 1932</p> <p>As per sections 19 and 22 of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business and is done in a usual manner.</p>

	<p>In the instant case Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner.</p> <p>Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.</p>
QUESTION 57	<p><i>M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;</i></p> <p>a) <i>Whether M/s LMN & Company can file the suit against M/s XYZ & Company?</i> b) <i>What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?</i></p> <p><i>What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?</i></p>
ANSWER	<p>According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.</p> <p>a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm. b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.</p> <p>In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company</p>

THE COMPANIES ACT, 2013

QUESTION 58.	<p><i>ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?</i></p>
ANSWER	<p><u>Death of all members of a Private Limited Company under the Companies Act, 2013:</u></p> <p>The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).</p> <p>The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.</p>

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	<p>In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.</p> <p>Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.</p>
QUESTION 59.	<p><i>F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability.</i></p> <p><i>Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.</i></p>
ANSWER	<p>The House of Lords in <i>Salomon Vs Salomon & Co. Ltd.</i> laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company.</p> <p>But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate facade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.</p> <p>The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.</p> <p>The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.</p> <p>The same was upheld in <i>Re Sir Dinshaw Maneckji Petit and Juggilal vs. Commissioner of Income Tax.</i></p>
QUESTION 60.	<p><i>The paid-up Share Capital of AVS Private Limited is Rs.1 crore, consisting of 8 lacs Equity Shares of Rs.10 each, fully paid-up and 2 lacks Cumulative Preference Shares of Rs.10 each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVS Private Limited. XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited. With reference to the provisions of the Companies Act, 2013, ,examine whether AVS Private Limited is a subsidiary of TSR Private Limited?</i></p>
ANSWER	<p>In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—</p> <ul style="list-style-type: none"> (i) controls the composition of the Board of Directors; or (ii) 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:

	<p>Explanation.—For the purposes of this clause,—</p> <ol style="list-style-type: none"> a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors <p>In this case XYZ Pvt Ltd.(Rs 30 lacs) and BCL Pvt Ltd.(Rs.15 lacs) together hold a majority of equity shares and thus majority voting power in AVS Pvt Ltd.(Rs.80 lacs) and both these companies are subsidiaries of TSR Pvt Ltd.</p> <p>Thus TSR Pvt. Ltd has a majority stake in AVS Pvt Ltd through its subsidiaries. Hence, TSR Pvt, Ltd will be treated as the holding company of AVS Pvt Ltd.</p>
QUESTION 61.	<p><i>X, a chemical manufacturing company distributed 20 lacs (Twenty Lacs) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 2013 decide whether the said distribution of money was "Ultra vires the company?"</i></p>
ANSWER	<p>The objects for which a company is formed are laid down in the Object Clause of the Memorandum of Association. These objects define the limits of activities of the company and as a legal entity a company cannot operate outside the ambit defined in its objects clause in the Memorandum. A company therefore, is empowered to do only such acts which are:</p> <ol style="list-style-type: none"> within the framework of the Memorandum <i>i.e.</i> stated in clear terms in the objects clause in the Memorandum of Association of the company, or reasonably and fairly incidental to the attainment of its main objects, or which are otherwise authorised by the Companies Act. <p>If the company does any act which is not covered under the above three categories, such acts shall be beyond the power of the company and shall be declared <i>ultravires</i> the Memorandum of the Company. <u>The term <i>ultravires</i> means "beyond the powers."</u></p> <p>The leading case through which this doctrine was enunciated is that of <i>Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875)</i>.</p> <p>An act which is ultra vires the company is void and of no legal effect.</p> <p>In the instant case Distribution of Rupees Twenty Lacs by a company engaged in Chemical manufacturing is not 'Ultravires' since it was conducive to the continued growth of the company as chemical manufacturers and thus it is reasonably incidental to the attainment of its main objects.(<i>Evans vs Brunner, Mood & Co. Ltd.1921</i>).</p> <p>Hence, the issue of ultra vires does not arise to such a donation.</p>
QUESTION 62.	<p><i>The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer.</i></p>

<p>ANSWER</p>	<p>In terms of section 4(1)(c) of the Companies Act, 2013, the powers of the company are limited to:</p> <ol style="list-style-type: none"> i. Powers expressly given in the "Objects Clause" of the Memorandum (which is popularly known as 'express' power), or conferred by the Companies Act, or by any other statute <li style="text-align: center;">and ii. powers reasonably incidental or necessary to the company's main objects (termed as "Implied' powers). <p>The Act further provides that the acts beyond the powers of a company are ultra vires and void and cannot be ratified even though every member of the company may give his consent [<i>Ashbury Railway Carriage Company Vs Richee</i>]</p> <p>The objects clause enables the shareholders, creditors or others to know what its powers are and what is the range of its activities. The objects clause therefore is of fundamental importance to the shareholders, creditors and every other person who deals with the company in any manner what so ever. A company being an artificial legal person can act only within the ambit of the powers conferred upon it by the Memorandum through the "Objects Clause".</p> <p>Every person who enters into a contractual relationship with a company on any matter is presumed to be aware of its objects and is supposed to have examined the Memorandum of Articles of the company to ensure proper contractual agreement. If a person fails to do so, it is entirely at his own peril.</p> <p>In the instant case, M/s LS R Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. J. Such act cannot be treated as being within either the 'express' or 'implied' powers of the company. Mr J who entered into partnership is deemed to be aware of the lack of powers of M/s LSR {Pvt} Ltd.</p> <p>In the light of the above, Mr, J cannot enforce the agreement or liability against M/s LSR Pvt. Ltd under the Companies Act.</p>
<p>QUESTION 63.</p>	<p><i>The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the pu rpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs. The members of the company convened an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advice them.</i></p>
<p>ANSWER</p>	<p>Doctrine of ultra vires:</p> <p>The meaning of the term ultra vires is simply" "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.</p> <p>It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.</p>

	<p>On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on.</p> <p>The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.</p> <p>Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.</p> <p>Therefore, in the instant case the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.</p>
QUESTION 64.	<p><i>The Articles of Association of a Limited Company provided that 'X' shall be the Law Officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid?</i></p>
ANSWER	<p>Section 5 (1) of the Companies Act, 2013 states that the Articles of a company contain the regulations for the management of a company. Further section 5 {2} provides that the Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company.</p> <p>Removal of Law Officer: The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 10(1)].</p> <p><u>However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.</u></p> <p>In this case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid. (<i>Eley V Positive Govt. Security Life Assurance Co.</i>)</p>
QUESTION 65.	<p><i>Explain the doctrine of 'Indoor management' in brief.</i></p> <p><i>The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.</i></p>
ANSWER	<p>The doctrine of Indoor Management is laid down in the <i>Royal British Bank vs. Turquand</i> case in which the directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper</p>

	<p>resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority.</p> <p>However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.</p> <p>In the instant problem the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to A and thereby to B. The title of the buyer cannot be better than that of the seller (Sale of Goods Act, 1930). Hence, 'B' will not succeed in getting the share registered in his name.</p>
QUESTION 66.	<p><i>The Articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.</i></p>
ANSWER	<p>According to 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.</p> <p>As per the case of <i>the Royal British Bank vs. Turquand</i> [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. <u>This is the doctrine of indoor management, popularly known as Turquand Rule.</u></p> <p>Since, the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.</p>
QUESTION 67.	<p><i>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 of Rs.25,00,000 in name of the company.</i></p> <p><i>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.</i></p> <p><i>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?</i></p>
ANSWER	<p>Doctrine of Indoor Management</p> <p>According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.</p>

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	<p>Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.</p> <p>The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.</p> <p>Thus,</p> <ol style="list-style-type: none"> 1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to. 2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf. <p>In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd</p>
QUESTION 68.	<p><i>FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.</i></p> <p><i>Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013.</i></p>
ANSWER	<p>As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,</p> <ol style="list-style-type: none"> a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or b) direct that liability of the members shall be unlimited; or c) direct removal of the name of the company from the register of companies; or d) pass an order for the winding up of the company; or e) pass such other orders as it may deem fit: <p>Hence, the order of NCLT directing that liability of members will be limited is legal.</p> <p>Precautions: Before making any order,—</p> <ol style="list-style-type: none"> a) the company shall be given a reasonable opportunity of being heard in the matter; and b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
QUESTION 69.	<p>Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:</p>

	<table border="1" style="width: 100%;"> <tbody> <tr> <td>Directors and their relatives</td> <td style="text-align: right;">190</td> </tr> <tr> <td>Employees</td> <td style="text-align: right;">15</td> </tr> <tr> <td>Ex-Employees (Shares were allotted when they were employees)</td> <td style="text-align: right;">10</td> </tr> <tr> <td>5 couples holding shares jointly in the name of husband and wife (5*2)</td> <td style="text-align: right;">10</td> </tr> <tr> <td>Others</td> <td style="text-align: right;">5</td> </tr> </tbody> </table> <p>The Board of Directors of the company propose to convert it into a private company. Advise whether reduction in the number of members is necessary</p>	Directors and their relatives	190	Employees	15	Ex-Employees (Shares were allotted when they were employees)	10	5 couples holding shares jointly in the name of husband and wife (5*2)	10	Others	5
Directors and their relatives	190										
Employees	15										
Ex-Employees (Shares were allotted when they were employees)	10										
5 couples holding shares jointly in the name of husband and wife (5*2)	10										
Others	5										
ANSWER	<p>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.</p> <p>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.</p> <p>It is further provided that -</p> <p>(A) persons who are in the employment of the company; and</p> <p>(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 members after the employment ceased, shall not be included in the number of members.</p> <p>In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.</p> <p>Total Number of members</p> <table border="1" style="width: 100%;"> <tbody> <tr> <td>Directors and their relatives</td> <td style="text-align: right;">190</td> </tr> <tr> <td>5 Couples (5*1)</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Others</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Total</td> <td style="text-align: right;">200</td> </tr> </tbody> </table> <p>Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.</p>	Directors and their relatives	190	5 Couples (5*1)	5	Others	5	Total	200		
Directors and their relatives	190										
5 Couples (5*1)	5										
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Total	200										
QUESTION 70.	<p><i>A company registered under section 8 of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2018 due to some favorable 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.</i></p>										
ANSWER	<p>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 profit in promoting its objects and prohibiting the payment of any dividend to its members.</p>										

	<p>Conditions for formation of a non-profit company</p> <p>A company may be formed u/s 8 if</p> <ol style="list-style-type: none"> The objects of the company are to promote commerce, art, science, sports, education research, social welfare, religion, charity, protection of environment or such other object. The company shall intend to apply its profits in promoting its objects; and The company intends to prohibit the payment of dividend to its members <p>In the instant case since the company is a company registered under section 8, it is prohibited from distributing any dividends to its members.</p> <p>Thus the contention of the member is incorrect.</p>
<p>QUESTION 71.</p>	<p><i>The paid-up share capital of Altar Private Limited is Rs.1 crore, consisting of 8 lacs Equity Shares of Rs.10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs.10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited</i></p>
<p>ANSWER</p>	<p>In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—</p> <ol style="list-style-type: none"> controls 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: <p>Explanation.—For the purposes of this clause,—</p> <ol style="list-style-type: none"> a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors. <p>In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd.</p> <p>However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as them holding company of Altar Pvt. Ltd</p>
<p>QUESTION 72.</p>	<p><i>Alfa school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?</i></p> <p style="text-align: center;">OR</p>

	<p><i>A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards.</i></p> <p><i>However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.</i></p> <p><i>Discuss what powers can be exercised by the central government against ABC club, insuch a case?</i></p>
<p>ANSWER</p>	<p>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, education, sports etc. Such company intends to apply its profit in promoting its objects.</p> <p>Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.</p> <p>Since, Alfa School was a Section 8 company and it had started violating the objects clause, hence in such a situation the following powers can be exercised by the Central Government:</p> <ol style="list-style-type: none"> i. The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections 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, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But 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. ii. Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. iii. Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
<p>QUESTION 73.</p>	<p><i>PQR Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of Rs. 40 lakh and turnover of Rs.2.5 crores. Explain the meaning of the "Small Company" and examine whether the PQR Private Ltd. can avail the status of small company in accordance with the provisions of the Companies Act, 2013</i></p>
	<p>Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—</p> <ol style="list-style-type: none"> 1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed (4 crores) which shall not be more than ten crore rupees; and

	<p>2) turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed (40 crores) which shall not be more than one hundred crore rupees.</p> <p>Prescribed limits [Rule 2(t) of Companies (Specification of Definitions Details) Rules, 2014]</p> <p>For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed Rs. 4 crores and rupees 40 crores respectively."</p> <p>Nothing in this clause shall apply to—</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act.</p> <p>In the present case, PQR Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of Rs.40 lakh and having turnover of Rs.2.5 crore. Since both the criteria of share capital and turnover is met, PQR Ltd. can avail the status of small company.</p>
QUESTION 74	<p><i>ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs.15 Crores and issued Non-Convertible Debentures worth Rs.40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is Rs.100 Crores and Non-Convertible Debentures stands at Rs.120 Crores.</i></p> <p><i>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?</i></p>
ANSWER	<p>As per Section 2(6) of the Companies Act, 2013, an 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.</p> <p>The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.</p> <p>The term "Total Share Capital", means the aggregate of the -</p> <p>(a) Paid-up equity share capital; and</p> <p>(b) Convertible preference share capital.</p> <p>In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of Rs.15 cr, which is less than requisite control of 20% of total share capital (i.e 100 cr) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.</p>
QUESTION 75	<p><i>Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of Rs.100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?</i></p>
ANSWER	<p>According to the provisions of 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-</p>

<p>(i) the Central Government, or</p> <p>(ii) by any State Government or Governments, or</p> <p>(iii) 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.</p> <p>According to Section 2(87), “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding 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.</p> <p>By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.</p>

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