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Preface

We feel great pride and pleasure in presenting before you the thoroughly updated, revised and updated Second Edition of "CA-FOUNDATION Solved Scanner".

The book has not only enjoyed great market success but has also received the appreciation of our readers i.e. our dear students.

The revised edition is adorned with certain new features:

1. Practical/Subjective Questions with detailed are covered especially keeping the new Subjective format of CA-Foundation Exams for subject Principles and Practice of Accounting.
2. Business Laws Subject variety of questions including case study passed conceptual/subjective approach are comprehensively covered to develop an understanding of significant provisions of select business laws and acquire the ability to address basic application-oriented issues as per new subjective format of CA-FOUNDATION Examination.
3. All formulae and key points of all chapters of Business Mathematics and Statistics have been provided in noted form for quick revision purpose.
4. Business Economics (thoroughly updated and revised as per current ICAI requirements) has been provided in notes form for easy and quick reference of the students. Exhaustive practice of MCQ's covered will give an understanding of concepts and theories in Business Economics and how to apply such concepts and theories in simple problem solving also.
5. Business Correspondence and Reporting, Logical Reasoning and Business and Commercial Knowledge subjects are widely covered and broadly defined keeping student based easy adaptation and learning approach towards these newly added subjects of CA-FOUNDATION syllabus.
6. The questions which have been repeated over the attempts have been removed to avoid duplicacy of questions.
7. The questions of November, 2019 Examination have been incorporated at appropriate places in the book.

We would like to place on record our sincere gratitude to all those students who have taken immense pain in forwarding questions to us. May God bless you in all your future endeavours.

Your feedback is like a guideline for us. Hence, we seek the suggestions of our readers with all humbleness.

We would like to place on record our sincere thanks to the Publishers "Shuchita Prakashan (P) Ltd." for their endless support and hardwork to present this revised edition well in time before you.

With best wishes, we would sign off by quoting

"The ability to concentrate and to use your time well is everything if you want to succeed in studies - or almost anywhere else for that matter."

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**Paper 2
Business Laws and Business
Correspondence and Reporting**

**CA AMAR OMAR
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Author's Communication to Students

"Confidence is the only companion of Success."

Confidence comes through practice and an insight into what is being asked in the examination. The examination pattern of CA–FOUNDATION does not leave the aspiring students with an opportunity to go through the examination questions as they are not supposed to take away the question paper.

To overcome this problem and to provide a morale booster for the students, we present this first memory based book of CA–FOUNDATION examination questions, which will surely provide you the adequate confidence and support to face the main examination.

This book will cater not only the students under our direct guidance but to one and all spread over distances.

"There is a brilliant child locked inside every student." Believe in yourself and you will accomplish your goals faster and better.

All suggestions towards betterment of the book will be greatly appreciated.

With all warm wishes and loads of luck for your forthcoming examination, we would sign off by quoting:

"One must have strategies to execute his dreams"

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You can reach us at:
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Syllabus

Paper 2 Business Laws and Business Correspondence and Reporting (100 marks)
(One paper – Three hours)
Paper – 2A : Business Laws (60 marks)

Objective:

To develop an understanding of significant provisions of select business laws and acquire the ability to address basic application-oriented issues.

Contents

1. **The Indian Contract Act, 1872:** An overview of Sections 1 to 75 covering the general nature of contract, consideration, other essential elements of a valid contract, performance of contract, breach of contract, contingent and quasi contract.
2. **The Sale of Goods Act, 1930:** Formation of the contract of sale, Conditions and Warranties, Transfer of ownership and delivery of goods, Unpaid seller and his rights.
3. **The Indian Partnership Act, 1932:** General Nature of Partnership, Rights and duties of partners, Reconstitution of firms, Registration and dissolution of a firm.
4. **The Limited Liability Partnership Act, 2008:** Introduction-covering nature and scope, Essential features, Characteristics of LLP, Incorporation and differences with other forms of organizations.
5. **The Companies Act, 2013 :** Essential features of company, Corporate veil theory, Classes of companies, Types of share capital, Incorporation of company, Memorandum of Association, Articles of Association, Doctrine of Indoor Management.

Note: If new legislations are enacted in place of the existing legislations, the syllabus would include the corresponding provisions of such new legislations with effect from dates notified by the Institute.

Paper – 2B : Business Correspondence and Reporting (marks 40)

Objective:

To acquire and develop good communication skills requisite for business correspondence and reporting.

Part – I: Communication

Contents

1. Communication

- (i) Types
- (ii) Directions
- (iii) Network
- (iv) Process
- (v) Problems
- (vi) Barriers
- (vii) Types of Communication
 - (a) Interpersonal Skills
 - (b) Listening Skills
 - (c) Emotional Intelligence
- (viii) Sample Questions with Answers
- (ix) Exercises.

Part – II : Sentence Types and Word Power

2. Sentence Types(Direct-Indirect, Active -Passive Speech)

- (i) Sentence: Definition
- (ii) Classification of sentence based on connotation
 - (a) Assertive sentences
 - (b) Interrogative sentences
 - (c) Imperative sentences
 - (d) Exclamatory sentences
 - (e) Optative sentences
- (iii) Sentence Structure
 - (a) Subject and Predicate
 - (b) Verb (Auxiliary, Finite)
 - (c) Object (Direct, Indirect)
 - (d) Complement
 - (e) Adjunct or Adverbial
 - (f) Clause Structure
 - (g) Types of Clauses
 - Independent clauses
 - Dependent clauses
 - Relative or noun clauses

- (iv) Types of sentences
 - (a) Simple sentence (b) Compound sentence
 - (c) Complex sentence (d) Compound-complex sentence
- (v) Direct-Indirect Speech
 - (a) Introduction
 - (b) Procedure for converting Direct speech into Indirect speech
 - Rules for converting Direct speech into Indirect speech
 - Change in pronouns
 - Change in tenses
 - Change in modals
 - Changes for Imperative sentences
 - Changes for Exclamatory sentences
 - Changes for Interrogative sentences
 - Punctuation in Direct speech
 - (c) Rules for converting Indirect speech into Direct speech
- (vi) Active Passive Voice: Introduction
 - (a) Usage : Active vs. passive voice
 - (b) Reasons for using Passive voice
 - (c) Changing Passive voice to Active voice
 - (d) Changing Active voice to Passive voice
 - (e) Suggestions for using Active and Passive voice
- (vii) Verbs Voice Active or passive
- (viii) Exercises

3. Vocabulary Root Words, Synonyms, Antonyms, Prefixes, Suffixes, Phrasal verbs, Collocations and Idioms.

- (i) Introduction
- (ii) Significance of improving vocabulary
- (iii) How to improve vocabulary
- (iv) Root words
- (v) Synonyms and Antonyms
- (vi) Words formed by using Prefixes
- (vii) Words formed by using Suffixes
- (viii) Phrasal verbs
- (ix) Collocations
- (x) Idioms
- (xi) Exercises

Part – III : Comprehension Passages and Note Making

4. Comprehension Passages

- (i) Introduction to Comprehension Passages
- (ii) Points to ponder
- (iii) Sample Passages with answers
- (iv) Exercises

5. Note Making

- (i) Introduction to Note Making
- (ii) Significance of Note Making
- (iii) Detailed Format Heading(Title)
 - (a) Sub-heading (b) Indentation
 - (c) Points (d) Use of abbreviations
 - (e) Summary (f) Content
 - (g) Expression
- (iv) Steps to Comprehend and summarize text
- (v) Helpful Hints
- (vi) Sample Passages with Notes
- (vii) Exercises

Part – IV : Developing Writing Skills

6. Introduction to Basic Writing

- (i) Introduction
- (ii) Process of writing
- (iii) Styles of Writing
- (iv) Significance of writing skills for students
- (v) Writing Conventions
- (vi) Characteristics of good writing
- (vii) Do's and Don'ts of good writing

7. Précis Writing

- (i) What is Précis writing?
- (ii) Features of good Précis writing
- (iii) How to write a Précis
- (iv) Do's and Don'ts of Précis writing
- (v) Examples(Passages with Précis)
- (vi) Exercises

8. Article Writing

- (i) What is an Article?
- (ii) Essential elements of Article Writing
- (iii) Detailed Format
 - (a) Title
 - (b) By- Writer's Name
 - (c) Body
 - Introduction - Main Idea-Support - Conclusion
 - (d) Sample Articles
 - (e) Exercises

9. Report Writing

- (i) What is a Report?
- (ii) Essential elements of Report Writing
- (iii) Kinds of Reports
 - (a) Reporting for a Meeting/Assembly
 - (b) Reporting for a Newspaper
 - (c) Reporting for a Magazine
- (iv) Detailed Format for (iii) above
 - (a) Title
 - (b) By- Writer's Name
 - (c) Place, Date
 - (d) Body
 - What - When - Where - Who
 - How
 - (e) Tips and Conventions of Report Writing
 - (f) Sample Reports
 - (g) Exercises

10. Writing Formal Letters

- (i) Types of Letters
 - (a) Circulars
 - (b) Complaints
 - (c) Memos
 - (d) Promotional Content
 - (e) Sales
 - (f) Recovery/Remittances
- (ii) Detailed format for (i) above
 - (a) Date
 - (b) Salutation
 - (c) Subject

- (d) Body of the letter
 - First paragraph - Second paragraph
- (e) Complimentary Closure
- (iii) Points to Remember
- (iv) Sample Letters
- (v) Exercises

11. Writing Formal Mails

- (i) How to Write a Formal Mail?
- (ii) Writing Effective Mails
- (iii) Essential elements of Mails
 - (a) Subject line
 - (b) Formal Greetings
 - (c) Target Audience(Reader)
 - (d) Clarity and Conciseness
 - (e) Formal Closing
 - (f) Proof read
 - (g) Feedback
- (iv) Tips and Conventions of Mails
- (v) Sample Mails
- (vi) Exercises

12. Resume Writing

- (i) Essential Elements of Resume
 - (a) Name and contact details
 - (b) Objective Summary
 - (c) Academic Qualifications and Achievements
 - (d) Co-curricular Achievements
 - (e) Training Programs attended/completed
 - (f) Strengths
 - (g) Interests/Hobbies
 - (h) Declaration
 - (i) Signature
- (ii) Resume Writing Tips and Conventions
- (iii) Sample Resumes
- (iv) Exercises

13. Meetings

- (i) Notice
- (ii) Agenda
- (iii) Drafting minutes
- (iv) Action Taken Report

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Hope you all have performed brilliantly at the examinations and our loads of luck to you for the future.

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S. No.	Student	City
1.	Ujjwal Goyal	Firozabad
2.	Shimone Kauraw	Jabalpur
3.	Vikas Agarwal Vines	Amroha
4.	Raunaq Singh	New Delhi
5.	Sheetal Doshi	Thane
6.	Riya Beladiya	Surat

Our sincere thanks to all the above students.

Our message to student community:

"Is it not good to sweat, if it smells success".

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

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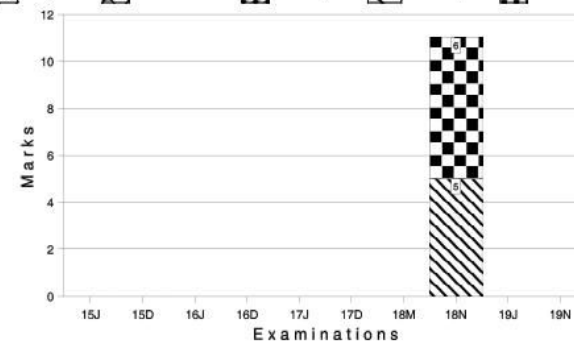
Business Laws

CHAPTER	The Indian Contract Act, 1872
1	
Unit: 1	Nature of Contract

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective  Short Notes  Distinguish  Descriptive  Practical



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LAW : INDIAN CONTRACT ACT, 1872

- Section 1 :** Short Title
- Section 2 :** Interpretation Clause
- Section 3 :** Communication, acceptance and revocation of proposals
- Section 4 :** A proposal is accepted from the date its acceptance is sent by the post
- Section 5 :** A proposal can be revoke at any time before the communication of its acceptance
- Section 6 :** Revocation how made
- Section 7 :** Acceptance must be absolute
- Section 8 :** Acceptance by performing conditions, or receiving consideration
- Section 9 :** Promises, express or implied
- Section 10 :** Defines the essential elements of a contract, Defines "Consideration"
- Section 11 :** Defines requirements for competency for competency of parties to the contract
- Section 12 :** What is a sound mind for the purposes of contracting.
- Section 13 :** "Consent" defined
- Section 14 :** "Free Consent" defined
- Section 15 :** "Coercion" defined
- Section 16 :** Undue influence" defined
- Section 17 :** "Fraud" defined
- Section 18 :** Misrepresentation" defined
- Section 19 :** "Void ability of agreements without free consent"
- Section 19 A:** Power to set aside contract induced by undue influence
- Section 20 :** Agreement void where both parties are under mistake of fact
- Section 21 :** Effect of mistakes as to law
- Section 22 :** Contract caused by mistake of one party as to matter of fact
- Section 23 :** What consideration and objects are lawful, and what not
- Section 24 :** Agreements void, if consideration and objects unlawful in part

- Section 25 :** Agreements without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done
- Section 26 :** Agreement in restraint of marriage void
- Section 27 :** Agreement in restraint of trade void
- Section 28 :** Agreements in restraint of legal proceedings void
- Section 29 :** Agreement void for uncertainty
- Section 30 :** Agreement by way of wager, void
- Section 31 :** "Contingent contract" defined
- Section 32 :** Enforcement of contracts contingent on an event happening.
- Section 33 :** Enforcement of contracts contingent on an event not happening
- Section 34 :** When event of which contract is contingent to be deemed impossible, if it is the future conduct of a living person
- Section 35 :** When contracts become void, which are contingent on happening of specified event within fixed time
- Section 36 :** Agreements contingent on impossible events, void
- Section 37 :** Obligation of parties to contracts
- Section 38 :** Effect of refusal to accept offer of performance
- Section 39 :** Effect of refusal of party to perform promise wholly
- Section 40 :** Person by whom promise is to be performed
- Section 41 :** Effect of accepting performance from third person
- Section 42 :** Devolution of joint liability
- Section 43 :** Any one of joint promisors may be compelled to perform
- Section 44 :** Effect of release of one joint promisor
- Section 45 :** Devolution of joint right
- Section 46 :** Time for performance of promise, where no application is to be made and no time is specified
- Section 47 :** Time and place for performance of promise, where time is specified and no application to be made
- Section 48 :** Application for performance on certain day to be at proper time and place
- Section 49 :** Place for performance of promise, where no application to be made and no place fixed for performance

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- Section 50 :** Performance in manner or at time prescribed or sanctioned by promisee
- Section 51 :** Promisor not bound to perform unless reciprocal promisee ready and willing to perform
- Section 52 :** Order of performance of reciprocal promisee
- Section 53 :** Liability of party preventing event on which contract is to take effect
- Section 54 :** Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
- Section 55 :** Effect of failure to perform at fixed time, in contract in which time is essential
- Section 56 :** Agreement to do impossible act
- Section 57 :** Reciprocal promise to do things legal and also other things illegal
- Section 58 :** Alternative promise, one breach being illegal
- Section 59 :** Application of payment where debt to be discharged is indicated
- Section 60 :** Application of payment where debt to be discharged is not indicated
- Section 61 :** Application of payment neither party appropriates
- Section 62 :** Effect of novation, rescission and alteration of contract
- Section 63 :** Promisee may dispense with or remit performance of promise
- Section 64 :** Consequence of rescission of voidable contract
- Section 65 :** Obligation of person who has received advantage under void agreement, or contract that becomes void
- Section 66 :** Mode of communicating or revoking rescission of voidable contract
- Section 67 :** Effect of neglect of promisee to afford promisor reasonable facilities for performance
- Section 68 :** Claim for necessaries supplied to person incapable of contracting, or on his account
- Section 69 :** Reimbursement of person paying money due by another, in payment of which he is interested

[Chapter → 1 Unit : 1] Nature of Contract ■ 2.7

- Section 70 :** Obligation of person enjoying benefit of non - gratuitous act
- Section 71 :** Responsibility of finder of goods
- Section 72 :** Liability of person to whom money is paid, or thing delivered, by mistake or under coercion
- Section 73 :** Compensation for loss or damage caused by breach of contract
- Section 74 :** Compensation for breach of contract where penalty stipulated for
- Section 75 :** Party rightfully rescinding contract entitled to compensation.

SELF STUDY QUESTIONS

Q.1: What is a Contract?

Answer:

- Section 2(h) of Indian Contract Act defines contract as: "An agreement enforceable by law."
Contract = Agreement + Enforceability by law
- Contract is made by acceptance of one party of an offer made to him by the other party, to do or abstain from doing some act.
Contract = Agreement + Obligation
- **Agreement :** Section 2(e) of Indian Contract Act defines it as, "Every promise or every set of promise forming the consideration for each other".
It has two characteristics:
 - (i) Two or more persons are required to make an agreement.
 - (ii) Both parties must agree to same thing in same sense at the same time.
- Section 2(b) of Indian Contract Act defines promise as – "A proposal (offer) when accepted becomes a promise".
Agreement = Promise
 = Accepted Proposal
 = Offer + Acceptance

Q.2: Distinguish between Agreement and Contract.**Answer:**

Basis	Agreement	Contract
Definition	As per Section 2(e) "every promise and every set of promises, forming consideration for each other".	As per Section 2(h) contract is "an agreement enforceable by law".
Meaning	Offer/Proposal + Acceptance.	Accepted proposal/Agreement + Enforceability by law.
Inter-relation	All agreement are not contracts.	All contracts are agreement.
Binding Nature	No legal obligation	It creates a legal obligation.
Scope	Is a wider term i.e. includes both legal and social agreements.	It only includes agreement enforceable by law.

Q.3: What are the Elements of a Valid Contract?**Answer:**

- Section 10 of Indian Contract Act states, "All agreements are contracts if they are made –
 - (i) by free consent of parties, competent to contract.
 - (ii) for a lawful consideration.
 - (iii) with a lawful object, and
 - (iv) not hereby expressly declared to be "void".

Elements includes:

- (a) **Two Parties:** There should be atleast two parties to make a contract. One cannot contract with himself/herself.

Case law: *Gujarat v/s Ramanlal S & Co.* Property distributed at the time of dissolution of partnership firm to its partners is not sale as one cannot be both buyer as well as seller and partner and partnership are same persons.

(b) Intention to Create Legal Relationship:

- Agreements relation to social matters; and
- Domestic arrangements between husband and wife, agreement between family members are not contracts due to absence of legal obligation.

Case Law: *Balfour v/s Balfour*

Facts : Mr. A promised to pay his wife ₹ 30 per month as house hold allowance, later, husband failed to pay the amount.

Decision: Held, the wife could not claim as there was no intention to create legal obligation and thus, it is not enforceable by law.

(c) Other Formalities to be Complied with in Certain Cases:

- It must be in writing.
- It must be registered under the law in force.

(d) Certainty of Meaning:

- Agreement must not be vague or indefinite.
- It must be certain.

(e) Possibility of Performance of an Agreement :

- Agreement which are to do any impossible act cannot be enforced.

Essential elements of valid contract includes –

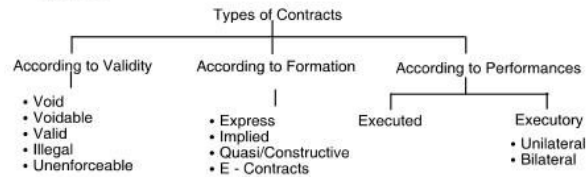
- (i) **Offer and Acceptance:** An agreement is the result of offer and acceptance.
- (ii) **Free Consent:** Consent must be free, i.e. it must not be obtained through coercion, undue, influence, fraud, misrepresentation or mistake.
- (iii) **Capacity of the Parties:** Persons competent to contract is who :
 - is of the age of majority i.e. 18 year or above

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- is of sound mind i.e. not a lunatic, drunken
 - is not disqualified from contracting i.e. should not be foreign sovereign, alien enemy, convicted, etc.
- (iv) **Consideration:**
- It means something in return i.e. *quid pro quo*.
 - It can be either any right or interest or profit, etc.
- (v) **Lawful Consideration and Object:**
- It should not be prohibited by law i.e. it should not defeat the provisions of law in force.
- (vi) **Not Expressly Declared to be Void:**
- Void agreement are not enforceable as they are without any legal effects.
 - Agreement must not be illegal.

Q.4: What are the various Types of Contracts?

Answer:



Q.5: What is the Definition of Void Contract?

Answer:

- It is not a contract at all as it is without legal effect.
- Section 2(j) of Indian Contract Act, 1872 defines it as: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".

Voidable Contracts:

- It is an agreement which is binding and enforceable but due to lack of one or more essentials of a valid contract, it may be repudiated.

[Chapter → 1 Unit : 1] Nature of Contract ■ 2.11

- Section 2(i) of the Indian Contract Act, 1872 defines it as – "All agreements which are enforceable by law at the option of any one of the parties, and other party has no such option, are known as voidable contracts".

Q.6: Distinguish between Void and Voidable Contracts.

Answer:

Void Contracts	Voidable Contracts
1. Section 2(j): Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	1. Section 2(i): It may be repudiated at the will of one or more parties but not at the will of other or others.
2. Not enforceable by any party.	2. Enforceable at the desire of the affected party.
3. It is void from beginning to end.	3. It is valid in the beginning but is subsequently declared void.
4. Agreement is void only if it is made with the person having no contractual capacity, without consideration etc.	4. Agreement is voidable when its consent is based on coercion, fraud, etc.
5. Here the contract cannot be executed due to change in circumstances or in law the agreement is void.	5. The contract can be executed if it is declared valid by the affected party.

Valid Contract = Agreement + Enforceable by law.

Q.7: What are Quasi Contracts and E-Contracts?

Answer:

Quasi Contract:

- An obligation imposed by law upon a person for the benefit of another even in the absence of a contract.
- It is based on principles of equity, justice and good conscience.

E-Contracts:

- Contracts entered into through electronic mode including e-mails.
- These contracts are also called as Cyber Contracts, mouse click contracts, electronic data interchange (EDI) contracts.

Q.8: What is the Definition of Offer/Proposal Under the Indian Contract Act, 1872 ?

Answer:

Proposal/Offer [Section 2(a) of the Indian Contract Act, 1872]:

- It refers to a "proposal" by one party to another to enter into a legally binding agreement with him.
- Section 2(a) defines it as –
"When one party signifies to another his willingness to do or abstain from doing something, with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal".

Q.9: Describe the Essentials of Proposal/ Offer.

Answer:

- Person making promise is called 'promisor' and to whom it is made i.e. who accept the promise is called 'acceptor' or 'promisee'.
- For entering a valid contract expression of willingness must be made to obtain the acceptance of the other.
- An offer can be for 'doing' something i.e. (positive) or 'not doing' some thing i.e. (negative).

Q.10: Describe the Essentials of a Valid Offer.

Answer:

- It must be capable of creating legal relations.
- It must be certain definite and not vague.
- It must be expressed or implied.
- It must be distinguished from an invitation to offer.
- It may be specific or general.
- It must be communicated to the offeree [Case Law: *Lalman Shukla v/s Gauri Dutt*].

- It must be made with a view to obtain the consent of the offeree.
- It may be conditional.
- It should not contain such terms, the non compliance of which would amount to acceptance.
- A statement of price is not an offer.

Q.11: Distinguish between offer and invitation to make an offer.

Answer:

- Offer is made to get the consent of other party.
- Invitation to offer is made to initiate the offer according to the invitation.
- Offer is made with an object to make a contract.
- Invitation to offer does not result in any contract formation.

Example of invitation to offer:

- Display of goods in a shop window with prices marked upon them.
 - Price catalogues, etc.
- Offer is different from mere statement of intention. Example - Announcement of a coming auction sales.

Relevant Case Law:

Harris v/s Nickerson

- When particular goods are advertised, for sale by auction, the auctioneer does not contract with anyone who attends the sale and is intending to purchase those goods when they are actually put up for sale.
- Offer is different from mere communication of information in the course of negotiation.

Example - Price statement considering negotiation.

Relevant Case Law:

Harvey V/s Facey

- Only a statement of lowest price at which the vendor would sell, contains no implied contract to sell at that price to the person making the inquiry.

Q.12: Define the term of Acceptance and Discuss the Legal Provisions relating to communication of Acceptance.

Answer:

- It means consent to the offer.
- Section 2(b) of the Contract Act defines it as "A proposal is said to be accepted, when the person to whom the proposal (offer) is made signifies his assent thereto".

Relationship between Offer and Acceptance:

"Acceptance is to offer what a lighted match is to a train of gun powder".
– Sir William Anson

- It means once acceptance is done, the same cannot be undone, i.e. it cannot be revoked.
- Offer remains offer until accepted, after acceptance it becomes a contract.

Q.13: When is the Communication of an offer and Acceptance through Post Completed.

Answer:

Communication of Offer and Acceptance:

1. Communication of offer:

- It is complete when it comes to the knowledge of the person to whom it is made.
- It may be communicated either by words spoken or written or may be inferred from conduct of parties.
- If made by post, it will be completed, when the letter containing offer reached the intended person.

2. Communication of Acceptance:

• It is complete:

As against the proposer: When it is put in the course of transmission to him so as to be out of power of the acceptor to withdraw the same.

As against the acceptor: When it comes to the knowledge of the proposer.

• **If sent by post, it is complete:**

As against the proposer: When the letter of acceptance is posted.

As against the acceptor: When the letter reaches the proposer.

Q.14: Write the short note of Modes of Acceptance.

Answer:

1. **By act** i.e., by any expression of words whether written or oral.
2. **By omission to do something** which is conveyed by conduct or by forbearance on part of one party to convey his/her willingness.
3. **By conduct** i.e. conveying acceptance by his/her conduct.

Example - Act of boarding a bus, etc., it must be noted that merely mental unilateral assent in one's own thoughts do not amount to communication.

Q.15: Describe the Special Condition of Communication.

Answer:

- Situation where agreement entered having special conditions which are conveyed and accepted tacitly or without even realising it.
- If a passenger receives a railway ticket with the words printed, "this ticket is issued subject to the notices, regulations and conditions in the current time tables of the railway". He is bound to accept the terms and conditions whether he has read them or not. [**Case Laws:** *Mukul Dutta v/s Indian Airlines; Lily white v/s R Mannuswamy*]
- If no reasonable notice on the face of document contains special conditions, then acceptor will not incur any contractual obligation. [**Case Law:** *Raipur transport co. v/s Ghanshyam*]

Q.16: Write Short Note on Communication of Performance.

Answer:

Acceptance of the proposal from view point of

- (a) **Proposer:** When acceptance is put in the course of transmission, out of the power of acceptor.

- (b) **Acceptor:** When it comes to the knowledge of the proposer. If sent by post, it is complete
As against the proposer : When the letter of acceptance is posted.
As against the Acceptor: When the letter reaches the proposer.

Q.17: What do you understand by Revocation of offer and Acceptance? Describe the Condition of Communication of Revocation.

Answer:

Revocation of Offer:

- It means withdrawal or taking back of an offer.
- It can be revoked anytime before its acceptance.

Revocation of Acceptance:

- It means withdrawal or taking back of acceptance by the acceptor.
- It may be revoked at any time before its communication is completed as against the acceptor, but not afterwards.

Communication of Revocation:

- It is complete –
As against the person who makes it: When it is put into a course of transmission to the person to whom it is made so as to be out of power of the person who makes it.
- **By Post : Communication of offer when complete :** When offer comes into the knowledge of offeree.
- **Communication of acceptance when complete:** When offeree or acceptor posts the letter of acceptance and it becomes out of power of acceptor to withdraw it.
As against the person to whom it is made: When it comes to his knowledge.

Q.18: What do you mean by Lapse of Offer and which ways there can be Lapse of Offer ?

Answer:

- It means end of an offer.

- Offer should be accepted before it lapses.
- **Offer may lapse in following ways:**
 - (a) By communication of notice of revocation
 - (b) By lapse of time [Case Law : *Ramsgate Victoria Hotel v/s Montiflore*]
 - (c) By failure to accept condition precedent
 - (d) By death or insanity of the offeror
 - (e) By counter offer by the offeree
 - (f) By not accepting the offer in prescribed mode
 - (g) By rejection of offer by the offeree
 - (h) By change in law or circumstances.

SHORT PRACTICE QUESTIONS

1. What do you understand by 'contract'. Enumerate its elements.
2. Write short notes on the following:
 - (a) Voidable contract
 - (b) Implied Contract
 - (c) Cross offer
 - (d) Agreement
 - (e) Revocation to offer and acceptance.
3. Differentiate between :
 - (a) Offer and Invitation to offer
 - (b) Void and Voidable contract.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is True or False:

- (i) A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor. (2 marks)

Answer:

Correct:

The proposer can withdraw the offer before the posting of the letter by the acceptor but not afterwards. Sec. 5 of the Indian Contract Act, states that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Acceptance of the proposal is complete only after the letter of acceptance is put in the letter box and not before.

1995 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) If an offer is made in the form of a promise in return for an act, the performance of that act even without any communication thereof, is to be treated as an acceptance of the offer.
(iv) Counter offer to an offer does not make the original offer lapse. (2 marks each)

Answer:

(i) **Correct:**

As per the provisions of the Indian Contract Act, as contained in Section 8, when the performance of the conditions of a proposal takes place, or some required act is done, it shall constitute an acceptance to the proposal.

(iv) **Incorrect:**

In order to make a binding contract, there must be an absolute and unconditional acceptance of terms of the offer. A counter offer is a rejection of the original offer and constitute a new offer. Therefore, the original offer shall lapse on making a counter offer by the other party.

1995 - Nov [1] State with reasons whether the following statement is True or False:

- (i) Acceptance can be made even without the knowledge of the offer. (2 marks)

Answer:

Incorrect:

In order to constitute a contract, offeree must have the knowledge of the offer, and there can be no acceptance without it. (Lalman v. Gauri Dutt, 1913.)

1996 - May [1] State with reasons whether the following statement is True or False:

- (i) An agreement with intention to create legal liability is not enforceable in law. (2 marks)

Answer:

Incorrect:

Section 2(h) of the Indian Contract Act, 1872 requires an agreement to be worthy of being enforceable by law. The parties to a contract must have the intention to impose a legal duty on the promisor to fulfill the promise and bestow a legal right on the promisee to claim its fulfillment. An agreement without intention to create legal obligation is no contract.

1997 - May [1] State with reasons whether the following statement is True or False:

- (i) If the offeree does not accept the offer according to the mode prescribed by the offeror, the offer does not lapse automatically. (2 marks)

Answer:**Correct:**

An offer must be accepted in the manner prescribed by the offeror. Where it is not so made, the offeror can treat it as lapsed, but he should inform the offeree about his decision. If he does not inform the offeree about his rejection, the offer does not stand lapsed. (Felthouse v. Bindley, 1862).

1998 - May [1] State with reasons whether the following statement is correct or incorrect:

- (i) All kinds of obligations created between the parties form part of the contracts.
- (iii) A contract to purchase a black horse, which was dead at the time of bargain, is voidable. (2 marks each)

Answer:**(i) Incorrect:**

An agreement should give rise to a legal obligation i.e. obligation which is enforceable at law [Section 2(h)]. Agreement which give rise only to social, moral or domestic cannot be termed as contracts. [Balfour v. Balfour 1919].

(iii) Incorrect:

According to the Section 20 of the Indian Contract Act, where both the parties to an agreement are under a mistake as to a matter of fact essential to agreement, the agreement is void. Since, neither party was aware of the fact that the horse was dead at the time of bargain, the contract is void, and not voidable.

1998 - Nov [1] State with reasons whether the following statement is Correct or incorrect:

- (i) Communication of an offer is complete when the letter is posted though it has not reached the person to whom the offer is made. (2 marks)

Answer:**Incorrect:**

Communication of an offer is complete when it comes to the knowledge of the person to whom it is made (Section 4 of the Indian Contract Act, 1872). When the letter containing offer is posted, the offer will be complete only when the letter reaches the person to whom it is made.

1999 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) Where the mode of acceptance is prescribed in the proposal, it need not be accepted in that manner. (2 marks)

Answer:**Incorrect:**

Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. Section 7(2) of the Indian Contract Act, 1872 lays down that if the proposal prescribes the manner of acceptance and the acceptance is not made accordingly, the proposer may within a reasonable time, insist to follow the mode of acceptance prescribed and not otherwise.

1999 - Nov [1] State with reasons whether the following statement are correct or incorrect:

- (i) A proposal when accepted becomes a contract.
- (ii) An illegal contract is fatal to the main contract, but not to collateral transactions. (2 marks each)

Answer:**(i) Incorrect:**

Section 2(b) of the Indian Contract Act, 1872, which defines the term 'acceptance' state that proposal when accepted becomes a promise. Thus, acceptance creates the promise and not a contract because to create a contract, the element of enforceability is necessary.

(ii) **Incorrect:**

An illegal agreement is one, which has been expressly declared as the unlawful. Such an agreement is a nullity and hence cannot be enforced. When an agreement is illegal, collateral agreements to such illegal agreements are also illegal. Hence the question of their enforcement does not arise.

2000 - May [1] State with reasons in brief whether the following statement is correct or Incorrect:

- (i) Every agreement is necessarily regarded a contract. (2 marks)

Answer:

The statement is incorrect:

As per Section 10 of the Indian Contract Act, 1872, an agreement is regarded as a contract when it is enforceable by law. In other words, an agreement that the law will enforce is a contract. Hence, every agreement cannot essentially be regarded as a contract, but every contract is an agreement.

2001 - May [1] State with reasons in brief whether the following statement are correct or incorrect:

- (i) The proposal should always be communicated to the person to whom it is made.
(ii) A Tender does not amount to an offer. (2 marks each)

Answer:

(i) **Correct:**

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made (Section 4 of Indian Contract Act, 1872).

(ii) **Correct:**

A tender is in the same category as a quotation of price. It is not an offer. It is merely an invitation to an offer. When a tender is approved, it is converted into standing offer. A contract arises only when an order is placed on the basis of a tender.

2001 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is void. (2 marks)

Answer:

Incorrect:

According to Section 2(i) of the Indian Contract Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract and not void.

2002 - May [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Communication of acceptance of an offer is complete as against the acceptor the moment it comes to the knowledge of the offeror. (2 marks)

Answer:

Correct:

The communication of acceptance is complete as against the acceptor when it comes to the knowledge of the proposer since it will then be out of the power of the acceptor to revoke. (Section 4 para 2 of the Indian Contract Act, 1872.)

2002 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Offer may be revoked after the letter of acceptance is posted by acceptor. (2 marks)

Answer:**Incorrect:**

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards (Section 5 of the Indian Contract Act). The Communication of acceptance is complete as against the proposer when the letter of acceptance is posted (Section 4 of the Indian Contract Act). As the letter of acceptance is posted, offer cannot be revoked in this case.

SHORT NOTES

1995 - Nov [7] Write short note on the following:

(b) Voidable Agreement. (5 marks)

Answer:**Voidable Agreement:**

A contract the consent to which is caused by coercion, undue influence, fraud or misrepresentation is voidable at the option of the party whose consent was so caused (*Bishandeo Narain v. Seogero Rai AIR 1951 SC 280*).

Thus, the aggrieved party has the option either to avoid the contract or alternatively, to affirm it. The burden of proving the said elements is on the plaintiff [*Hims Enterprise v. Ishak Bin Subari (1992) 1 CLJ 132*]. He can exercise his option only once. If the contract is affirmed, it becomes enforceable and if avoided it becomes void [*East India Commercial Company v. Collector of Customs AIR 1962 SC 1893*]. It continues to be valid and enforceable till it is repudiated by the aggrieved party. The application of option by aggrieved party is subject to certain restrictions:

1. When the party, aware of his right to rescind, affirms the contract, the right of rescission is lost.
2. When a party at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.
3. Rescission must be claimed within reasonable time.

4. The right of rescission is lost when a third party, acting in good faith, acquires right in the subject matter of the contract.
5. Rescission is subject to the condition that the party seeking rescission must be in position to restore the benefits he may have obtained under the contract.

Section 19A deals with the contracts affected by undue influence which have been declared as voidable at the option of aggrieved party. Such contracts may be set aside absolutely or partly. Court enjoys discretion.

1996 - Nov [7] Write short note on the following:

(a) Acceptance by conduct. (5 marks)

Answer:

Acceptance by Conduct: Section 2(b) of the Indian Contract Act states that when a person to whom a promise is made, signifies his assent thereto, the proposal is said to have been accepted. The assent means that acceptance has been signified either in writing or by word of mouth or by performance of the act. Thus, acceptance may be in writing, oral or by conduct.

Thus, where a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance. To illustrate it, a tradesman receives an order from a customer and executes it by sending the goods, the customer's order for goods constitute the offer which has been accepted by the tradesman subsequently by sending the goods. This example is a case of acceptance by conduct.

In fact, where the offeror invites acceptance by the performance of the act, the performance of the act becomes a valid acceptance of the offer. On this account it is provided in Section 8 that the performance of the condition or conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. A bus conductor shouting that the bus is going to a particular place invites passengers to board the bus. A passenger boards the bus and pays the fare. Boarding and paying the fare amounts to acceptance by conduct on the passenger.

But performance of the act without knowledge of the offer, does not amount to a valid acceptance. *Lalman Shukla v. Gourie Dutt and Crown v. Clarke* are the cases on this point.

1998 - May [7] Write short note on the following:

(a) Kinds of offer. (2 marks)

Answer:

The kinds of offer may be discussed as follow:

- (i) **General Offer:** It is an offer made to the public at large and hence anyone can accept and do the desired act (*Carlill v. Carbolic Smoke Ball Co.* 1893). For instance, an offer to give reward to any body who finds a lost dog is a general offer. Although a general offer is made to the public at large, the contract is concluded only with that person who acts upon the terms of the offer.
- (ii) **Specific Offer:** When the offer is made to a specific or an ascertained person it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made (*Bottom v. Johns*).
- (iii) **Cross Offer:** When two parties exchange identical offers in ignorance at the time of each others offer, the offers are called Cross Offers. There is no binding contract in such a case because offer made by a person can not be treated as an acceptance of the another's offer [*Tinn v. Hoffman and Co.* (1873) 29 L.T. 271].
- (iv) **Counter Offer:** When the offeree offers to qualified acceptance at the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer (*Hyde B. v. Wrench 1840*).
- (v) **Standing Open or Continuing Offer:** An offer which is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer. Tender for the supply of goods is a kind of standing offer.

1999 - May [7] Write short note on the following:

(c) Executed and executory contracts. (2 marks)

Answer:

Executed and Executory Contracts: On the basis of execution or performance, contracts may be classified into two groups i.e. executed and executory.

Executed contract is a contract where both the parties have fulfilled their respective terms and obligations, and where in nothing remains to be done by either party. Thus, executed is a contract which has reached to its maturity of performance and completion of contractual obligations.

On the other hand executory contract is a contract where both the parties have still to perform their respective contracted obligations. In such contracts, some act remains to be performed at a future date.

1999 - Nov [5] Write short note on the following:

(ii) Offer and invitation to offer. (2 marks)

Answer:

Offer and Invitation to Offer: When one person signifies to another his willingness to do or to obtain from doing anything with a view to obtaining the asset of that other to such act or abstinence, he is said to make an offer or proposal [Section 2(a) Indian Contract Act, 1872]. A valid offer must meet the tests of (1) contractual intention of definiteness and (2) communication to offeree.

Offer is different from an invitation to offer. In an offeror expresses his willingness to contract in terms of his offer with such finality that the only thing to be awaited is the assent of the other party. Where a party without expressing is final willingness, proposes certain terms on which is willing to negotiate, he does not make an offer. He only invites the other party to make an offer on those terms. An invitation to traders to make tenders, an invitation by a company to the public to subscribe its shares, display of goods for sale in shop windows, auction sales, quotation of prices in reply to a query, are all examples of invitation to offer - buy or sell as the case may be.

2001 - May [7] Write short note on the following:

(c) Void Contracts. (5 marks)

Answer:

Void Contracts (read as void agreements): An agreement which is not enforceable by law is void. Such an agreement has some legal defect and therefore cannot be enforced in a Court of Law. Section 2(i) defines a void contract as, "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

Thus, a void agreement does not have any legal affect i.e., the party not performing his part of the promise under a void contract cannot be sued in a law court, rather does not have any legal obligations.

Examples of Void Contracts:

1. A contract vitiated by mistake as to fact and both the parties are mistaken as to the identity, existence of the subject matter of the contract etc. (Section 20)
2. Where the consideration or object of the contract is unlawful (Section 23).
3. Where the contract is not supported by consideration.
4. Agreements declared expressly void by the Contract Act, such as:
 - agreement in restraint of marriage (Section 26)
 - agreement in restraint of trade (Section 27)
 - agreement in restraint of legal proceedings (Section 28)
 - agreement by way of wager (Section 30).

There may be cases of such contracts where in the beginning they are valid but later on become void due to impossibility of performance due to operation of law.

2001 - Nov [5] Write short note on the following:

- (a) When is the communication of an offer and acceptance through post complete? (2 marks)

Answer:

Communication of an offer is complete through post when it comes to the knowledge of the person to whom it is made i.e., when the letter containing the offer reaches the offeree. (Section 4 Indian Contract Act, 1972).

Communication of acceptance has two aspects:

- (i) As against the proposer.
- (ii) As against the acceptor.

Against the proposer, the communication of acceptance is complete when it is put in the course of transmission to him, so as to be out of the prior of the acceptor, but it shall be complete as against the acceptor when it comes to the knowledge of the proposer. e.g. A proposer by letter to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of acceptance is complete;

- (a) As against A, when the letter is posted by B.
- (b) As against B, when the letter is received by A.

Thus, an offer can be revoked till a duly addressed letter of acceptance is put in the course of transmission and not thereafter. It is immaterial whether the letter of acceptance reaches the other party or is lost in transit. The acceptance can, however, be revoked till the letter of acceptance actually reaches the offeror and he learns of its contents.

2002 - May [2] Write short note on the following:

- (a) Executed and Executory contracts. (2 marks)

Answer:

An executed contract is one in which both the parties have performed their respective obligations. In other words, if the consideration for the performance of obligation is paid, it is a contract for executed consideration. For example, A agrees to write an article to B for ₹ 5,000. When A writes the article and B pays the price, i.e. when both the parties have performed their obligations, the contract is called an 'Executed' Contract.

An executory contract is one in which both the parties have not yet performed their obligations. In other words, if the consideration to the performance of obligations is still to be payable, the contract is known as contract for executory consideration. Thus, in the above example the contract is executory if A has not yet written the article and B has not paid the price.

2002 - Nov [2] Write short note on the following:

- (a) Rules regarding acceptance. (5 marks)

Answer:**Rules relating to Acceptance of Offer:**

The following are the Rules relating to Acceptance of Offer:

- (i) **Absolute and Unqualified:** As per Section 7 of the Indian Contract Act, 1872, an acceptance is valid when it is absolute and unqualified and is expressed in some unusual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted.
- (ii) **Communicated to Offeror:** An acceptance with a variation is no acceptance. It is simply a counter proposal, which shall have to be accepted by the original proposer before a contract can be deemed to have come into existence. A counter proposal is the offer by the offeree and can result in a contract only if the other party accepts it. It must further be remembered that an acceptance must specifically relate to the offer made. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.
- (iii) **Mode Prescribed:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e. not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
- (iv) **Reasonable Time:** Acceptance must be given within a reasonable time and before the offer lapses.
- (v) **Mere Silence is not Acceptance:** Acceptance may be expressed or implied. Acceptance must be given after knowing the offer. Acceptance must be given by the person to whom the proposal is made.
- (vi) **By Conduct Also:** The assent mean that acceptance has been signified either in writing or by word of mouth or by performance of some act. Therefore, when, a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

DISTINGUISH BETWEEN

1995 - Nov [4] (b) Distinguish between :

- (ii) General offer and Specific offer. (5 marks)

Answer:

General and Specific Offer: When offer is made to a definite person, it is known as specific offer and such offers can be accepted only by that specified person (*Bottom v. Johns*). On the other hand general offer is an offer made to the public in general and hence anyone can accept and do the desired act. In *Carlill v. Carbolic Smoke Ball Co.* (1893) The Court accepted that an offer could be made to the world at large.

Section 8 of the Indian Contract Act points out that performance of the conditions of a proposal is an acceptance of the proposal.

Where a general offer is of continuing nature, it will be open for acceptance to any number of persons until it is retracted.

1996 - May [4] (b) Distinguish between :

- (ii) Offer and invitation to an offer. (2 marks)

Answer:

Offer and Invitation to an Offer: An offer is the final expression of willingness by the offeror to be bound by his offer, should the other party choose to accept it. On the other hand offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus, 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 only invites the other party to make an offer on those terms.

In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. The mere statement of the lowest price which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry.

Examples: Quotations, Catalogues and Price lists cannot be considered as offers.

1996 - Nov [6] (b) Distinguish between :

- (i) Void and Voidable Contract. (5 marks)

Answer:

Void and Voidable Contracts: The two can be distinguished on the basis of :

1. **Definition:** A contract which ceases to be enforceable by law become void when it ceases to be enforceable. A voidable contract is an agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of other or others.
2. **Nature:** A void contract is valid when it is made but subsequently becomes unenforceable on certain grounds such as supervening impossibility, subsequent illegality, repudiation of a voidable contract, a contingent contract depending upon happening of an uncertain event when occurrence of such event becomes impossible. A voidable contract on the other hand, is voidable at the option of the aggrieved party.
3. **Rights:** A void contract does not provide any legal remedy for the parties to the contract. They even cannot get it performed when they so desire. The aggrieved party in a voidable contract gets a right to rescind the contract. When such a party rescinds it, the contract becomes void. In case the aggrieved party does not rescind the contract, within a reasonable time, the contract remains valid.
4. In Case of void agreements, restitutions is always allowed unless the illegality on the void nature of the agreement was known to the parties at the time of making of the agreement. In voidable contracts, when they are rescinded benefit will be restored as far as possible.
5. A voidable contract does not affect the collateral transactions. But where the agreements is void on account of illegality the collateral transactions will also become void.

1997 - May [4] (b) Distinguish between :

- (ii) Void agreement and an Illegal agreement. (2 marks)

Answer:

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENTS: According to Section 2(g) of the Indian Contract Act, 1872, an agreement not enforceable by law is void. Both the agreements are not enforceable by the law courts. The points of distinction, however, of both these agreements can be made on the following basis:

1. **Scope:** An illegal agreement is always void while a void agreement is not always illegal being void due to some other factor e.g., an agreement in which the terms of the agreement are uncertain.
2. **Effect of collateral transactions:** If an agreement is merely void and not illegal, the collateral transaction to the agreement may be enforced for execution, but collateral transactions of an illegal agreement cannot be enforced since they are also declared to be illegal.
3. **Punishment:** Illegal agreements are punishable under the Indian law, while void agreements are not.
4. **Void-ab-initio:** Illegal agreements are void from the very beginning, but sometimes void agreements are not. Sometimes a valid contract may be subsequently void e.g. doctrine of supervening impossibility may apply.

2000 - Nov [4] (b) Distinguish between :

- (i) Void and Illegal agreements. (5 marks)

Answer:

Please refer on 1997 - May [4] (b) (ii) page no. 33

2000 - Nov [6] (b) Distinguish between :

- (i) Wagering agreements and contingent contracts. (5 marks)

Answer:

Wagering Agreements and Contingent Contracts: The two can be distinguished below:

1. A wagering agreement is a promise to give money or moneys worth upon the determination or ascertainment of an uncertain event. A contingent contract on the other hand, is a contract to do or not to do something if some event, collateral to contract does or does not happen.

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2. A wagering agreement consists of reciprocal promises, while a contingent contract may not contain reciprocal promises.
3. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
4. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a contingent nature.
5. A wagering agreement is void, while a contingent contract is valid.
6. In a wagering agreement the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wager is a game of chance, but this is not so in case of a contingent contract.

2001 - Nov [6] (b) Distinguish between :

- (ii) Offer and an Invitation to Offer. (5 marks)

Answer:

Offer and an Invitation to Offer: When a person communicates to another his willingness to do or abstain from doing something with a view to obtain the assent of that other person towards the act or abstinence, the person making the communication is said to be making an offer.

An invitation to offer is a mere statement of intention inviting a person to come and negotiate. Therefore, it is prelude to an offer. It is devoid of any legal effects., e.g.,

- (a) goods displayed in show window with price tags thereon.
- (b) Prospectus issued by a company inviting the public to apply for shares.
- (c) Price lists or catalogues.
- (d) Circulars sent to potential customers.
- (e) Tender notice.
- (f) Auction notice.

DESCRIPTIVE QUESTION

1994 - Nov [2] Comment on the following:

- (a) Acceptance is to a proposal what a lighted match is to a train of gun-powder. (5 marks)

[Chapter → 1 Unit : 1] Nature of Contract ■ 2.35

Answer:

Offer is lighted match while acceptance is a train of gun powder: It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder". The effect is that the acceptance produces something which can not be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into a promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of Gun Powder the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun Powder (i.e. The Offer) by itself is inert, it is the lighted match (i.e., the acceptance) which causes the gun powder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties. Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1994 - Nov [5] (b) What agreements are expressly declared void by the Indian Contract Act? (5 marks)

Answer:

Void contract, in effect, is no contract at all. Usually the word void means not binding in law. As such void contract means a contract which has no legal effect at all, it is a nullity and will not create any legal rights between the parties. A contract may be void from its very inception or it may become void subsequently. The Indian Contract Act specifically declares the followings agreements as void:

1. Agreements entered by parties incompetent to contract such as minor, lunatic, persons of unsound mind, alien enemy, sovereign States, Ambassadors and Diplomatic Couriers.
2. Agreements with an unlawful consideration and object in ful or in part (Sec. 23).
3. Agreements made under a mutual mistake of fact by both the parties to the contract (Sec. 22).

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4. Agreements without consideration (Sec. 25).
5. Agreements in restraint of marriage, trade, or legal proceedings etc.
6. Agreements the meaning of which is not certain. But where the meaning thereof is capable of being made certain, the agreement shall be a valid one (Sec. 29).
7. Wagering agreements i.e., agreements involving a payment of a sum of money upon the determination of an uncertain event and where none of the parties to the agreement has a legitimate interest in the subject matter of the agreement.

1996 - May [5] (a) What are the essential elements of a valid contract?
(5 marks)

Answer:

The examination of the provisions of **Section 10 of the Indian Contract Act, 1872** disclose the following essentials of a valid contract:

1. There must be an agreement between the parties to the contract with an intention to create legal relationship. An agreement consists of offer and acceptance, which is enforceable by law.
2. There must be consideration and its object both must be lawful and not prohibited by law.
3. The parties must have capacity to make a valid contract so as to be not affected by the provisions of Section 11.
4. The consent of the parties must be free so as not to be covered by the provisions of Section 14.
5. The agreement must not be one which the law declares to be either illegal or void.
6. The agreement must be in writing and registered if so required by the law for the time being in force.

1996 - Nov [2] Comment on the following:

- (a) A proposal can be revoked otherwise than by communication.
(5 marks)

[Chapter ➔ 1 Unit : 1] Nature of Contract ■ 2.37

Answer:

A proposal can be revoked otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also:

1. **By lapse of time fixed for acceptance or lapse of reasonable time, if not acceptance has been specified [Section 6(2)]:** A proposer is not bound to keep his proposal open indefinitely, the reason being that it would amount to a promise without consideration and such a promise is unenforceable. (*Ramsgate Victoria Hotel Co. Vs. Montefiore*).
2. **By the failure of the acceptor to fulfil a condition precedent to acceptance:** Section 6 of the Act contains the law on this subject. A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to acceptance. e.g. A agrees to execute a certain document in favour of B, if B deposits ₹ 5,000/- as earnest money.
3. **By the death of insanity of the proposer:** Death or insanity of the proposer under the law operates as the revocation of the proposal, only if the fact of the death or insanity has come to the knowledge of the acceptor.

1997 - May [5] Answer in brief on the following:

- (a) What is an illegal agreement? State the effects of illegality. (5 marks)

Answer:

The illegal agreements are those which involve committing of a crime or act of moral turpitude or acts opposed to public morals. An illegal agreement is not only void as between the immediate parties; but its collateral transactions are also illegal.

Effects of illegality: Generally in law, no action is allowed on an illegal agreement so that people will be discouraged from entering into an illegal agreement. Thus, no action can be taken for recovery of money paid or property transferred under an illegal agreement and for breach of illegal agreement.

In case of equal guilt in an illegal agreement, the position of defendant is better than that of plaintiff. However, the plaintiff may sue on an illegal agreement than where he was induced to enter into an agreement by fraud or undue influence and where an essential part of the agreement has not been carried out and he is truly repentant.

1997 - Nov [2] Comment on the following:

(b) Counter offer to an offer lapses the offer. (5 marks)

Answer:

When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer. (*Hyde v. Wrench, 1840*)

The rule is based on the principle that unless the parties have consensus-*ad-idem* i.e. are of one mind there cannot be agreement between them. The rule is in itself obviously necessary for words of acceptance which do not correspond to the proposal actually made are not really an acceptance of anything and therefore, can amount to nothing more than a new proposal, or, as it is frequently called a counter offer. Making a counter offer amounts to a rejection of the original offer, which offer can not be thereafter accepted.

1997 - Nov [3] (a) Define the term 'Acceptance'. Discuss the legal provisions relating to communication of acceptance. (10 marks)

Answer:

According to Section 2(b), the term 'acceptance' is defined as follows:

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

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct. The legal provisions relating to communication of acceptance are contained in Section 4.

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete:

- (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;
- (b) as against the acceptor, when it comes to the knowledge of the proposer.

Illustrations: A proposes, by letter, to sell a house to B at a certain price:

- (1) The communication is complete when B receives the letter.
- (2) B accepts the proposal by a letter sent by post. The communication is complete:
 - as against A, when letter is posted.
 - As against B when the letter is received by A.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely: (1) by any act or (2) by omission, intending thereby to communicate to the other or which has the effect of communicating it to the other. This first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, telex messages, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by every one, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

1998 - Nov [3] (a) Who is competent to accept an offer? Explain the rules relating to an offer, as provided in the Indian contract Act, 1872.

(10 marks)

Answer:

Who can accept an offer?

When an offer is made to a particular person it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. However, in case of general offer, it can be accepted by any one, who has the knowledge of the offer. The persons who want to accept the offer must be competent to enter into contract, as per requirements of the Indian Contract Act.

Legal Rules relating to an offer:

- (i) Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even if it is accepted, does not create any relation because it is not so intended.
- (ii) Terms of offer must be definite, unambiguous and certain and not loose and vague.
- (iii) Offer must be distinguished from: (i) a declaration of intention and an announcement and (ii) an invitation to make an offer or do business.
- (iv) Offer must be communicated, otherwise there can be no acceptance of it. An acceptance of the offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.
- (v) Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.
- (vi) Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance. Thus, a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted.
- (vii) A statement of price is not an offer.

1999 - May [2] Comment on the following:

(b) Offer is lighted match while acceptance is a train of gunpowder.

(5 marks)

Answer:

It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to "Sir William Anson" Acceptance is to offer what a lighted match is to a train of gunpowder". The effect is that the acceptance produces something which cannot be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of gun powder, the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun powder (i.e. the offer) by itself is inert, it is the lighted match i.e. the acceptance which causes then gunpowder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties, Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1999 - May [5] (b) When the revocation of a proposal may be made otherwise than by communication? (5 marks)

Answer:

Revocation of proposal otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also;

- (i) **By lapse of time [Section 6(2)]:** Proposer is not bound to keep his proposal open indefinitely the reason being that it would amount to a promise without consideration, and such a promise is unenforceable (*Ramsgate Victoria Hotel Co. V. Montefiore 1866*).
- (ii) **By non-fulfilment by the offeree of a condition precedent to acceptance [Section 6(3)]:** A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to the acceptance. A condition precedent is a condition which prevents an obligation to

come into existence until the condition is satisfied. An offeror may impose condition such as executing a certain document, or deposition of certain amount as earnest money. Failure to satisfy any such condition shall make a proposal lapse.

- (iii) **By the death or insanity of the proposer:** Death or insanity of the proposer, under the Indian law, operates as the revocation of the proposal, only if the fact to the death or insanity has come to the knowledge of the acceptor. If the acceptor accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid.
- (iv) **If a counter offer is made to it:** The counter offer lapses the offer made by the offeror.
- (v) If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section 7(2)].

An offer can, however, be revoked subject to the following rules:

- (i) It can be revoked at any time before its acceptance is complete as against the offeror.
- (ii) Revocation takes effect only when it is communicated to the offeree.
- (iii) If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiration of the period only.
 - (a) if the offer has in the meantime not been accepted or
 - (b) if there is no consideration for keeping the offer open.

2000 - May [2] Comment on the following:

- (i) An acceptance must be made before the proposal lapses. (5 marks)

Answer:

Under Section 5 of the Indian Contract Act, 1872, a proposal may be revoked at any time, before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards. Therefore an acceptance must be made before the offer lapses or is revoked.

2000 - May [4] (i) What are implied contracts? State the various implied contracts. (10 marks)

Answer:

Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as "Quasi-Contracts" or Implied Contracts. A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Sections 68 to 72 of the Indian Contract Act, 1872 have prescribed the following relationships creating quasi-contractual relationship:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that 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.
3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the things so done or delivered.
4. **Responsibility of finder of goods:** Under Section 71 of the Act, a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Thus, quasi-contractual right is always a right to money and generally, though not always to a liquidated sum of

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money. It does not arise from any agreement between the parties concerned, but is imposed by the law. It is a right which is not available against whole world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

2000 - Nov [3] (a) State the rules relating to acceptance of a Contract. (10 marks)

Answer:

Rules Relating to Acceptance of a Contract: The Indian Contract Act, 1872 specifies the following rules relating to the acceptance of a contract. It means that a valid contract can be made only by adhering to the following rules relating to the acceptance of an offer. These are:

1. **Acceptance must be absolute and unqualified:** Acceptance shall be valid only when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.
2. **Acceptance must be communicated to the offeror:** Acceptance must be brought to the knowledge of the offeror. Unless the offeror knows about the acceptance, he can not be bound by the acceptance given by the offeree. Mere silence is no acceptance.
3. **Acceptance must be in the mode prescribed:** Where the mode of acceptance has been prescribed in the proposal, it must be accepted in the manner prescribed, otherwise it shall not bind the offeror. However, the offeror may later on waive this condition and bound himself from the acceptance not given in the prescribed mode.
4. **Time:** Acceptance must be given within the prescribed time and where no time is prescribed, within the time which is reasonable and does not allow the offer to lapse.
5. Acceptance may be expressed i.e. words of mouth or in writing, or even implied i.e. by conduct of the party concerned.
6. **Acceptance must be made by the person to whom the offer is made:** Acceptance given by some other person or even on behalf of the person to whom the offer is made, is not valid acceptance.

[Chapter ⇒ 1 Unit : 1] Nature of Contract ■ 2.45

7. It cannot precede an offer. If it does, it is not a valid acceptance and does not result in a contract.
8. It must show an intention on the part of the acceptor to fulfil the terms of offer.
9. It must be given before the offer lapses or before the offer is withdrawn.

2002 - May [5] (a) When does an offer come to an end? (5 marks)

Answer:

An offer may come to an end by revocation or lapse or rejection. According to Section 6 and 7 of the Indian Contract Act, 1872, an offer comes to an end in the following cases:

1. If the offerer revokes his offer before it has been accepted by the offeree, the offer comes to an end.
2. The offer comes to an end if it is not accepted within the time fixed in the offer, or within a reasonable time as the case may be. What is a reasonable time is a question of fact.
3. If there is a condition mentioned in the proposal, before the fulfilment of which the acceptor can not accept the proposal, the offer will automatically be revoked if the acceptor fails to fulfil that condition precedent.
4. If the fact of the death or insanity of the proposer comes to the knowledge of the acceptor before acceptance, the offer of proposal is revoked. (Section 6)
5. Sometimes, the mode of acceptance is specifically prescribed in the offer. In such a case, if the proposal is not accepted in the prescribed form or method, it stands revoked. [Section 7(2)]
6. An offer comes to an end as soon as it is rejected by the offeree.
7. An offer lapses if it becomes illegal before it is accepted.

2002 - Nov [2] Comment on the following:

- (a) All contracts are agreements, but all agreements are not contracts. (5 marks)

Answer:**“All contracts are agreements, but all agreements are not contracts”:**

An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e. no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus existence of an agreement is a pre-requisite for existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2018 - Nov [6] (a) Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 marks)

Answer:

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

(i) By notice of revocation

(ii) **By lapse of time :**

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

- (iii) By non-fulfilment of condition precedent where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offer or for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.
- (iv) By death or insanity
- (v) By counter offer
- (vi) By the non-acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality.

PRACTICAL QUESTION

2018 - Nov [3] (b) (i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. (3 marks)

- (ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 marks)

Answer:

- (i) According to the facts of this case there appears to be a clear-cut application of the definition of a contract that is statutorily defined as an agreement enforceable by law. In this case though initially Mr.

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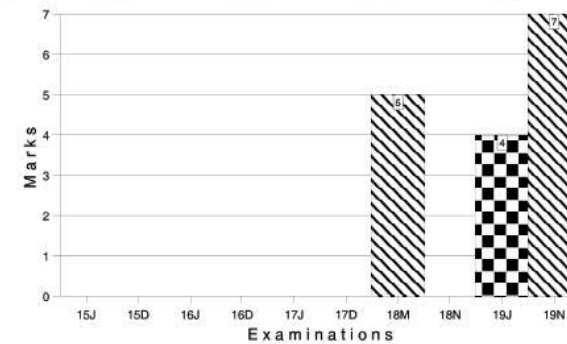
Ramesh made an agreement in the form of promise to his wife Mrs. Lali of paying ₹ 50,000 but after getting the agreement registered under the law he got the agreement converted into a contract which is legally enforceable. Hence it can be concluded that Mrs. Lali will succeed in her suit to recover ₹ 50,000 from her husband Mr. Ramesh.

- (ii) According to the facts of the case this case qualifies as a typical example covered within the definition of a General offer that means an offer made to public at large and hence anyone can accept and do the desired act. In this case, Ms. Lovely had accepted the general offer by seeing the price tag and when she moved to purchase that she was refused by the shop-keeper who had himself previously made the general offer by putting the dress on display with the price tag. Hence it can be concluded that Ms. Lovely can certainly sue the shop-keeper.

CHAPTER	The Indian Contract Act, 1872
1	

Unit: 2 **Consideration**

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS**Q.1: What is consideration?****Answer:**

- Consideration should be something that is lawful.
- A mere promise is not enforceable at law.
- It means "Quid Pro Quo" i.e. "something in return".
- As per Section 2(d), when at the desire of the promisor, the promisee or any other person
 - has done or abstain from doing, or
 - does or abstains from doing, or
 - promises to do or abstains from doing, such actor abstinence or promise is called as consideration of promise."
- As per Section 2(e) "Every promise and every set of promises, forming the consideration for each other, is an agreement"
 - General Rule is - "NO CONSIDERATION, NO CONTRACT"
 - Consideration may move at the desire of the promisor and not at the desire of the third party.
 - There may be stranger to consideration but not stranger to a contract.
 - Under English Law, it must move from the promisee or any other person. Thus, stranger cannot sue on the contract.
 - Under Indian Law, however a stranger to consideration can file a suit.

Q.2: Describe the Legal Rules Regarding Consideration.**Answer:**

- It must move at the desire of the promisor [Case law : Durga Prasad V/s Baldeo].
- It may be done by promisee himself or by any other person.

Relevant Case Law :

Chinnayya V/s Ramayya.

Facts -

- (i) A by a gift deed transferred certain property to her daughter, given her the direction to pay annuity to A's brother.
- (ii) On the same day, daughter executed a writing in favour of A's brother, agreeing to pay annuity.
- (iii) She declined afterwards stating that no consideration had moved from her uncle Decision - Court held that consideration may move from any person. Thus, A's brother was entitled to file a suit.
 - It may be past, present or future.
 - It must be real and not vague.
 - It must be legal.
 - It need not be adequate (But if not adequate then consent must be free).
 - It must be something more than the promisee is already bound to do for the promisor.
 - It may not be illusory.

Q.3: What do you understand Suit by a third party to a contract?**Answer:**

- **Doctrine of Privity of Contract :**

- It means that only those persons who are the parties to a contract, can sue and be sued upon the contract.
- It is different from stranger to consideration.
- It refers to the relationship between parties who have entered into the contracts.
- The third party cannot sue upon it, even though, the contract may be for his benefits.
- Thus, 'a stranger to the contract' cannot bring a valid suit under the contract'.

Relevant Case Law -

- Dunlop Pevmatic Tyre Co. V/s Selfridge Ltd.
- Tweddle V/s Atkinson

- **Stranger to contract how right to sue in the following cases :**
 - (a) Beneficiary of Trust or charge, can enforce it even if he is not a party in trust deed.
 - (b) Marriage settlement, partition and other family arrangements and other such agreements which are reduced to writing.
 - (c) Acknowledgment of liability or by past performance thereof.
 - (d) Assignment of contract, however, it must be noted nominee is not an assignee.
 - (e) Contracts entered through an agent.
 - (f) Covenant running with the land. The purchaser of immovable property is bound by several conditions created by an agreement affecting the land, even though he is not a party to the original agreement.
 - (g) Where the promisor by his own conduct is estoppel from denying his liability to perform the promise, the person who is not a party to the contract can sue upon to make the promisor liable.

Q.4: Describe the Validity of an agreement without consideration.

Answer:

- An agreement made is valid if -
 - expressed in writing and registered under law.
 - made an account of natural love and affection.
 - between parties standing in near relation to each other.
- A promise is valid if -
 - it is a promise to compensate a person wholly or in part, a person who has already done something voluntarily for the promisor.
 - Something which the promisor was legally compellable to do.
- A promise to pay, wholly or in part, a debt, which is barred by law of limitation can be enforced if -
 - it is in writing.
 - it is signed by the debtor or his authorised agent.

Note - A debt barred by limitation cannot be recovered, a promise to pay such debt is without any consideration.

- It does not apply to completed gifts i.e. gift given and accepted.
- Consideration is not required to effect a valid bailment of goods i.e. gratuitous bailment.
- Not required to create an agency.
- If a person promised to contribute any thing to a charity and on his faith, the promisee undertakes a liability to that extent, the contract shall be valid. [Relevant case law : Kedarnath V/s Gorie Mohammed].

SHORT PRACTICE QUESTIONS

1. What do you mean by consideration ?
2. Write down legal rules regarding consideration.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) A stranger to the consideration can enforce the contract. (2 marks)

Answer:

Correct: Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This rule applies in the cases of marriage settlement, partition or other family arrangements, trust, agency, assignment, etc.

1996 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Inadequacy of the consideration cannot be taken into account by the court in determining whether the consent was given freely.

(2 marks)

Answer:

Incorrect : According to explanation 2 of section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because of the consideration being inadequate. But the court may take into account the inadequacy of the consideration in knowing the reality whether the consent of the promisor was given freely or not.

1997 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) Consideration in a contract of sale of goods can also be paid partly in money and partly in goods.

(2 marks)

Answer:

Correct: Consideration paid partly in money and partly in goods will be taken as a valid sales because price is there. It is so because price is considered must for sale.

1998 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Consideration may move even from a person who is not a party to the contract.

(2 marks)

Answer:

Correct: According to Section 2(d) of the Indian Contract Act, 1872 consideration may move from the promisee or any other person who may not a party to the contract. In other words, there can be a stranger to the consideration.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (iii) A promise to take either rice or smuggled opium for a consideration of ₹ 1,000 is wholly void.

(2 marks)

Answer:

Incorrect: As per Section 58 of the Indian contract. Act, 1872, that in the case of an alternative promise, one branch of which is legal and the another branch is illegal; the branch with legal promise can only be enforced. Therefore, to take the rice is a legal promise hence it is enforceable, whereas to take smuggled opium is illegal and is enforceable by law.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Consideration may be present or future but not past. (2 marks)

Answer:

Incorrect : Section 2(d) of the Act states that the consideration may be past, present or future,

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) Consideration for sale of goods must be in terms of Money.

(2 marks)

Answer:

Correct : It is one of the most important feature of the contract of sale that the price should be paid in term of money.

2002 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Consideration may be present or future, but not past. (2 marks)

Answer:

Incorrect: As per the definition of consideration contained in, Section 2(d) of Indian Contract Act, 1872 consideration may be present, past and future.

DESCRIPTIVE QUESTIONS

1994 - Nov [5] Answer the following:

- (a) When is a contract valid even without consideration? (5 marks)

Answer:

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

1. **Natural Love and Affection:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account of natural love and affection between parties standing in near relation to each other are the essential requirements for a valid contract though it is without consideration (Rajlukhee Devee vs. Bhootnath).
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Sec. 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) The services should have been rendered voluntarily.
 - (ii) The services must have been rendered for the promisor.
 - (iii) The promisor must be in existence at the time when services were rendered.
 - (iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration (Sec. 25(3)).
4. **Agency:** According to section 185 of the Indian Contract Act, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule of no consideration, no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

1995 - Nov [6] (a) What is Consideration? Discuss briefly the legal requirements of valid consideration. (10 marks)

Answer:**Meaning of Consideration:**

Consideration is an essential element of a valid contract. It is a technical word meaning thereby *quid pro quo* i.e. something in return. A valuable consideration in the sense of the law may consist either in some right, interest profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. Thus, consideration must result in a benefit to one party and a detriment or loss to the other party or a detriment to both.

Thus, if A agrees to sell his books to B for ₹ 100, B's promise to pay ₹ 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay ₹ 100.

Section 2(d) of the Indian Contract Act defines consideration as under:

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

For every valid contract consideration is very essential. But there are certain exceptions to this rule which have been incorporated under Section 25 of the Indian Contract Act.

Legal requirements of valid consideration may be enumerated as under:

- (i) Section 2(d) of the Indian Contract Act emphasises that consideration must move at the desire of the promisor. Any act done at the desire or request of the third party or voluntary acts would not constitute a valid consideration.
- (ii) Consideration must be lawful and should not be forbidden by law.
- (iii) Consideration must be real and not illusory. If it is physically impossible, vague or legally impossible, the contract cannot be enforced.

- (iv) Consideration must be of some value in the eyes of law. The Supreme Court has laid down consideration shall be something which not only the parties regard but the law can also regard as having some value.
- (v) The consideration must not be the performance of existing duties e.g. (i) legal obligations or (ii) contractual obligations.
- (vi) The consideration need not be adequate. In other words, an inadequate consideration does not render a contract void.
- (vii) The consideration may be furnished by the promisee or any other person. So long as there is consideration for a promise, it is immaterial who has furnished it.
- (viii) The consideration must be either positive or negative (See definition).
- (ix) Consideration may be forbearance to use.
- (x) The consideration may be past, present or future.

1996 - May [2] Comment on the following:

- (a) An agreement without consideration is void. (5 marks)

Answer:

A contract without consideration is valid under the following cases :

For an agreement to be enforceable at law must be supported by a valid consideration. An agreement without consideration is void and enforceable (General Rule). But Section 25. Specifies the cases where an agreement made without consideration is valid. The exceptional cases are as follows:

1. **Natural Love and Affection [Section 25(1)]:** An agreement made without consideration will be valid, if it is in writing and registered and is made on account of natural love and affection between the parties standing in near relation to each other. (with reference to Rajlukhee Devee Vs. Bhootnath).
2. **Compensation for services rendered [Section 25 (2)]:** An agreement will be valid without consideration if it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promiser was legally compellable to do for, that a promise to make payment for the past voluntary services is binding, there should be following factors:

- (i) the services should have been rendered voluntarily.
 - (ii) These should have been rendered for the provisor.
 - (iii) the promisor must exist at the time of rendering services.
 - (iv) the promisor must have intended to compensate to the promisee.
3. **Time-barred debt [Sec. 25 (3)]:** A promise to pay a time-barred debt is also enforceable, if it is in writing and signed by the promisor. The promise must be to pay whole or part-time debt.
 4. **Completed gift:** An agreement in respect of a gift that has been made and accepted.
 5. **Agency:** An agreement containing agency may be without consideration.

1996 - Nov [5] Answer the following:

- (a) When consideration is deemed to be unlawful? (5 marks)

Answer:

Unlawful Consideration: The legality of consideration and object thereto is provided under Section 10 of the Indian Contract Act, 1872 As per Section 23, an agreement of which the object or consideration is unlawful is void.

Following are the cases in which the consideration and object of an agreement is said to be unlawful:

1. If it is forbidden by law.
2. If it is of such nature that if permitted it will defect the provision of any law.
3. If it implies or involves injury to the person or property of another.
4. If it is fraudulent.
5. If the court regard it as immoral.
6. If it is opposed to public policy.

According to Section 24, where consideration and object of an agreement is unlawful in part the whole agreement is void.

1998 - May [2] Comment on the following (Give brief answers):

- (a) "For every valid agreement there should be the consideration". (5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 58

1999 - May [2] Comment on the following (Give brief answers):

(a) To form a valid contract consideration must be adequate. (5 marks)

Answer:

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. (*Bolton v. Modden*). Consideration must however, be something to which the law attaches value though it need not be a equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

2000 - May [7] Write short notes on the following:

(ii) Under what circumstances a contract without consideration is valid. (5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 58

2002 - May [2] Briefly the following:

(b) "No consideration, no contract". (5 marks)

Answer:

No consideration, no contract:

All contract, contain two parts: (1) the promise, and (2) the consideration for such promise. A promise without consideration is purely gratuitous. Such promise can not create a legal obligation, no matter that it is highly sacred and morally binding (*Abdul Aziz v. Mazum Ali -AIR 1914, 36 All 268*). Thus, the rule of law is that no consideration, no contract. Section 25 of the Indian Contract Act, 1872 embodies the rule that an agreement without consideration is void. However, there are certain exceptions to the general rule:

- (1) If an agreement is expressed in writing and registered and is made on account of natural love and affection, it is a valid contract without consideration.
- (2) A promise to compensate a person for something which has already been done voluntarily for the promisor, is valid without consideration, and creates a contract.
- (3) A promise by a debtor to pay a time-barred debt is valid provided that it is made in writing and is signed by the debtor or by his authorised agent in this behalf.
- (4) The rule 'no consideration, no contract' does not apply in case of a completed gift.
- (5) No consideration is necessary to create an agency.

2002 - May [7] Explain the following (Give brief answers):

(a) Unlawful consideration (5 marks)

Answer:

Unlawful Consideration: One of the essential element of consideration is that it must be lawful. An agreement becomes void, if it is based on unlawful consideration. The consideration of an agreement becomes unlawful when:-

1. It is forbidden by law or
2. If it is fraudulent or
3. If it defeats the provision of any law or
4. If it involves or implies injury to the person or property of another or
5. The court regards it as immoral or opposed to public policy.

2002 - Nov [5] Briefly the following:

(b) What is Consideration? Give its characteristics. (5 marks)

Answer:

Consideration:

It is the price of the promise i.e. something in return Section 2(d) of the Indian Contract Act, 1872 defines it as when the desire of the promisor, the promises or any other person abstained has done or from doing, or does or abstains for doing, or promises to do or abstain from doing something such an act or abstinence or promise is called consideration for the promise".

Characteristics

1. Consideration is the doing or not doing of something which the promisor desires to be done or not done.
2. Consideration must be at the desire of the promisor.
3. Consideration may move from one person to any other person.
4. Consideration may be past, present or future.
5. Consideration need not be adequate but should be real.

2018 - May [2] (a) State the exceptions to the rule "An agreement without consideration is void". (5 marks)

Answer:

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

1. Natural love and affection:

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

- 2. Compensation for past voluntary services:** A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, although it is without any consideration today.

3. Promise to pay time barred debt:

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

4. Agency:

No consideration is necessary to create an agency.

5. Completed Gift:

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

6. Bailment:

No consideration required for this.

7. Charity:

If one promises to undertake liability to contribute to charity, the contract shall be valid even though without consideration.

2019 - Nov [2] (a) Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? (7 marks)

Answer:

Section 2(d) of the Indian Contract Act, 1872 defines consideration as follows:

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

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

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

Legal Rules Regarding Considerations:**1. Consideration must none at the desire of the promisor:**

An act done at the desire of a third party is not a consideration.

2. Consideration may move from promisee or any other person:

There can be a stranger to consideration but not a stranger to a contract.

3. Executed and Executory Consideration:

When consideration consists of an act it is executed but when it consists of a promise it is executory.

4. Consideration may be past present or future.:

The words "has done or abstained from doing" are a recognition of the doctrine of past consideration.

5. Consideration need not be adequate:

It need not be of any particular value, but it must be something.

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

7. Consideration must be real and not illusory.

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

PRACTICAL QUESTIONS

2019 - June [1] (a) Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th Oct 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th Oct 2018, purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action ? (4 marks)

Answer:

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

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

In the given case between defendant (Mr. Mohanlal) and plaintiff (Mr. Chotelal) the consideration has been furnished on behalf of the plaintiff (Mr. Chotelal) by his father (Mr. Sohanlal). Although, the plaintiff was a stranger to the consideration but since he was a party to the contract he could enforce the promise of the promisor, since under Indian law, consideration may be given by the promisee or anyone on his behalf vide Section 2(d) of Indian Contract Act.

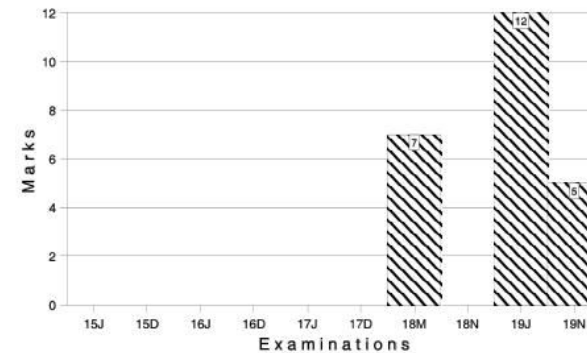
Thus, consideration furnished by Mr. Sohanlal to Mr. Mohanlal constitutes sufficient consideration for the plaintiff (Mr. Chotelal) to sue the defendant on the promise. Held, Mr. Chotelal was entitled to a decree for the right to use that 1 acre of land.

CHAPTER	The Indian Contract Act, 1872
1	
Unit: 3	Other Essential Elements of Valid Contract

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

Objective Short Notes Distinguish Descriptive Practical



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: Write Short Note on Capacity to contract.

Answer:

- It means that parties to the agreement must have capacity to enter into a valid contract.
- Person may be either natural or artificial i.e. persons can be human beings or body corporate.
- **According to Section 11**
"Every person is competent to contract, who, according to the law to which he is subject to –
(i) is of the age of majority,
(ii) is of sound mind
(iii) is not disqualified by any other law to which he is subject to"
- A person is disqualified to enter into contracts if he is:
 - (i) a minor
 - (ii) a person of unsound mind
 - (iii) otherwise disqualified by the law of land to enter into contract
 - (iv) a alien enemy
 - (v) an insolvent
 - (vi) a convict undergoing imprisonment.
- In India, the age of majority is regulated by the Indian Majority Act, 1875.
- According to it, every person domiciled in India attains majority on the completion of 18 years of age.
- If any guardian has been appointed for the minors or minor is under guardianship of court of wards, he attains majority on the completion of 21 years of age.

Relevant Case Law :

- *Mohiri Bibi V/s Dharmo Das Ghose*

Facts

- (i) Dharmodas Ghose, a minor, entered into a contract for borrowing a sum of ₹ 20,000 out of which longer paid his ₹ 8,000.

- (ii) Minor executed mortgage of property in favour of lender.
- (iii) Minor sued for setting aside mortgage.
- (iv) Privy council hard to ascertain the validity of mortgage.
- (v) U/s 7 of Transfer of Property Act, every person competent to contract is competent to mortgage.

Decision: Any money advanced to minor cannot be recovered as Section 10 and 11 makes the minor's contract absolutely void.

- As per Transfer of Property Act, a minor cannot transfer a property, but he can be a transferee.
- **Position of minor's agreement:**
 - (i) An agreement entered into by a minor is altogether void, i.e. *void-ab-initio*.
 - (ii) Minor can be a promisee or a beneficiary.
 - (iii) Minor can always plead majority.
 - (iv) Minor's agreement cannot be ratified by him.
 - (v) Contract by guardian is enforceable if:
 - (a) It is within his competence and authority,
 - (b) For the benefit of the minor.
 - (vi) Minor's property is liable for necessities.

Necessaries: "Goods suitable to the condition in life of such an infant or other person, and to his actual requirement at the time of sale and delivery."

It includes:

 - (a) Necessary goods
 - (b) Services rendered
 - (c) Loan incurred to obtain necessities.
 - (vii) Court can never direct specific performance of the contract.
 - (viii) Minor cannot be a partner in a partnership firm.
 - (ix) Minor can act as an agent and bind his principal without incurring any personal liability.
 - (x) Minor can never be adjudicated as insolvent.
 - (xi) A minor is liable in tort i.e. a civil wrong unless the tort in reality is a breach of contract.

- **Lunatics Agreement:**
- **As per Section 12 of the Indian Contract Act,** "a person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of undertaking it and of forming a rational judgement as to its effects upon his interests."
- **A person of unsound mind includes:**
 - (i) Lunatics
 - (ii) Idiots
 - (iii) Drunkards
- Such agreement is void.
- Lunatics estate will be liable for any necessities supplied to him or his family.
- A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind and he will be bound by it.
- A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
- **Persons disqualified by law from entering into contract.**
 - (i) **Alien Enemy:** Alien enemy is a foreigner whose state is at peace with India.
 - Alien is a person who is not an India citizen.
 - He becomes alien enemy on declaration of war between India and his country.
 - He cannot enter into a contract with an Indian subject.
 - (ii) **Foreign Sovereigns and Ambassadors:**
 - They enjoy certain special privileges due to which they cannot be legally proceeded against in Indian Courts.
 - If contracts are entered into through agents, then agents becomes personally responsible for the performance of the contracts.

(iii) **Convicts**

- Cannot enter into a valid contract while undergoing sentence, nor he can sue.

Note: All of the above points are known as flows in capacity.

Q.2: Define Free Consent under the Indian Contract Act, 1872.

Answer:

- As per the Indian Contract Act, "Two or more persons are said to consent when they agree upon the same thing in the same sense" (consensus-ad-idem).
- Free consent means consent given by parties out of their free will on their own without any fear, without any force, without any compulsion or threat from the other party.
- As per Section 14, consent is said to be free which is not caused by
 - (i) Coercion
 - (ii) Undue Influence
 - (iii) Fraud
 - (iv) Misrepresentation
 - (v) Mistake
- In the absence of free consent, contract is usually voidable at the option of the party whose consent is not free.

Q.3: Describe the Elements of Vitiating Free Consent.

Answer:

(i) **Coercion:**

- "It is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (IPC), or the unlawful detaining, or threatening to detain any property, to the prejudice of any person, whatever, with the intention of causing any person to enter into an agreement."
- **Exceptions of Coercion:**
The following threats are not coercion -
 1. Threat to file a suit.
 2. Consent given on the basis of legal obligations.

3. Threats by workers.
 4. Threats to detain property by mortgager.
- It may proceed from any person and may be directed against any person or goods.

(ii) Undue Influence

- A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other-
- It has following two elements :
 - (i) a dominant position
 - (ii) the use of it to obtain an unfair advantage.
- A person is deemed to be dominate the will of another if -
 - (i) he holds a real or apparent authority over the other, or
 - (ii) he stands in a fiduciary relation to the other, or
 - (iii) he makes a contract with a person whose mental capacity is temporarily or permanently affected by reasons of age, illness or mental or body distress.
- **Relationships that are presumed to have undue influence includes :**
 - (i) Parent and child
 - (ii) Guardian and ward
 - (iii) Religious/Spiritual Guru and Discipline
 - (iv) Doctor and Patient
 - (v) Solicitor and Client
 - (vi) Trustee and Beneficiary
 - (vii) Fiancé and Fiancee
- **Relationship where dominant position is not presumed by has to be proved by the aggrieved party :**
 - (i) Creditor and Debtor
 - (ii) Landlord and Tenant
 - (iii) Husband and Wife

- **This presumption can be rebutted by showing that :**
 - (i) full disclosure of all material facts was made.
 - (ii) adequate consideration was there, and
 - (iii) weaker party was in receipt of independent legal advice.
- (iii) Fraud**
 - Also known as wilful misrepresentation.
 - Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent with intent to deceive another party there to or his party, or to induce him to enter into the contract.
 1. The suggestion, as to fact, of that which is not true by one who does not believe it be true,
 2. The active concealment of a fact by one having knowledge or belief of the fact,
 3. A promise made without any intention of performing it,
 4. Any other act fitted to deceive,
 5. Any such act or omission as to law specially declared to be fraudulent.
 - Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud.
 - **But silence amounts to fraud in following cases :**
 - (i) Where it is the duty of a person to speak.
 - (ii) Where his silence is equivalent to speech.
 - (iii) When a person discloses only the half truth.
 - Following are certain contracts upon which law imposes a special duty to act with utmost good faith (contracts of Uberrimafidei).
 - (a) Insurance contracts.
 - (b) Prospectus of a company.
 - (c) Contract of sale of land.
 - (d) Contract of family arrangements.
 - In all of the above stated contracts, a person has to disclose all the material information.

(iv) Misrepresentations

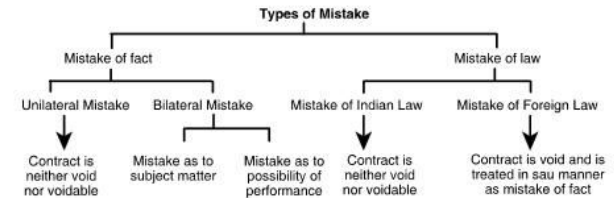
- Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation.
- Misrepresentations made by a person may be either:
 1. Innocent, or
 2. Without any reasonable ground.
- The aggrieved party can avoid the contract, but cannot sue for damages in normal circumstances.
- Its damages can be obtained in the following cases :
 - (i) From a director or promoter making innocent misrepresentation in company's prospectus.
 - (ii) From a person who has made certain statement in the court, relying upon which a party has suffered damages, is stopped by the court from denying it.
 - (iii) From an agent committing breach of warranty of authority.
 - (iv) Negligent representation made by one person to another between whom there exist a confidential relationship.

Note: When the consent is caused by coercion, undue influence, fraud and misrepresentation, though the agreement amounts to as contract such a contract is voidable at the option of the party whose consent was so obtained.

Q.4: How Many Types of Mistakes are there?

Answer:

- It refers to miscalculation or judgmental error by both or either of the parties.
- It must be "vital operative mistake".
- When both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, the agreement is altogether void.



Q.5: Describe the Legality of Object and Consideration as per Indian Contract Act,1872.

Answer:

- As per Section 23, of the Indian Contract Act, "An agreement whose object or consideration is unlawful is void."
- Consideration or object is unlawful :
 - (i) If it is forbidden by law.
 - (ii) It would, if permitted defeat the provisions of any law or,
 - (iii) Is fraudulent or
 - (iv) involves injury to the person or property of another, or
 - (v) is immoral, or
 - (vi) opposed to public property".

Circumstances which makes the consideration or object unlawful:

- (i) **Forbidden by Law:** It includes the acts which are punishable under any statute as well as prohibited by regulation or orders made in the exercise of the authority conferred by the legislature.
- (ii) **Defeat of the provision of law:** Agreement defeating the provisions of any statutory law is void. Law includes any legislative enactment or rule of Hindu and Muslim law or any other rule for the time being in force in India.
- (iii) **Fraudulent:** Agreement with an object to defraud others is void.
- (iv) **Injury to the person or property of another:** An agreement having such an object is void.

- (v) **Immoral:** Object of any agreement being immoral is illegal. It is also legal if its consideration is an act of sexual immorality. It covers a wide range of topics.
- (vi) Defeat any rule for the time being in force in India.
- (vii) **Opposed to Public Policy:** Freedom of contract is restricted by law only for the good for the community, some of the agreements which are held to be opposed to public policy includes:
1. Trading with enemy.
 2. Stifling prosecution i.e. agreement to present proceedings already instituted from running their normal course using force is pervasive and abuse of justice hence void,
 3. Maintenance and champerty i.e. an agreement in which a person agrees to assist another in litigation in exchange of a promise to hand over a portion of the proceeds of the action.
 4. Traffic relating to Public Offices.
 5. Agreements tending to create monopolies.
 6. Marriage brokerage agreements.
 7. Interference with the course of justice.
 8. Interest against obligation.
 9. Consideration unlawful in part.

Q.6: Define Void Agreements and Give some Examples.

Answer:

- Certain agreements have been expressly declared as void by contract Act.
- They are *void ab initio*.
- It includes the
 - (i) **Restrain of marriage:** Any agreement restraining any person, other than minor not to marry at all or not to marry any particular person is void.
 - (ii) **Restrain of trade (Section 27):** Agreement restraining anyone from exercising a lawful profession, trade or business of any kind, is void.
 - Both total or partial restraint are covered.
 - Restrain must be reasonable.

Following agreements are not in restraint of trade:

1. Service agreement by which an employee binds himself, during the term of his agreement, not to compete with the employer.
2. Agreement by a manufacturer to sell during a certain period his entire production to a wholesale market/merchant.
3. Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price.

(iii) **Restrain to legal proceedings (Section 28):** One party is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period from starting legal proceedings.

(iv) **Agreement the meaning of which is uncertain (Section 29):** An agreement, the meaning of which is not certain, is void but where the meaning there of is capable of being made certain, the agreement is valid.

(v) **Wagering Agreement (Section 30):**

- Wager means 'bet'.
- They are ordinary betting agreements.
- It refers to an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen.
- Such agreement is void.
- If one of the parties has control over the event, agreement is not a wager.
- Though wagering contracts are void, transactions incidental to wagering transactions are not void.

Transactions similar to wager (Gambling):

- Lottery transactions.
- Crossword Puzzles and competitions.
- Speculative transactions.
- Horse Race transactions.

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Transactions resembling wagering transactions but are not void:

- Chit Fund.
- Commercial transactions or share market transactions.
- Games of skill and Athletic competitions.
- Contract of Insurance.

Q.7: Distinguish between Contract of Insurance and wagering agreement?

Answer:

	Contract of Insurance	Wagering Agreement
1.	It is a contract entered to indemnify losses.	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.
2.	It is based on scientific and actuarial calculation of risks.	These are a gamble without any scientific calculation of risk.
3.	It is valid and enforceable until becomes void.	It is void and thus unenforceable in Court.
4.	Utmost good faith is to be observed.	Good faith need not be observed.
5.	There is a consideration due to the presence of insurable interest.	No consideration by way of premium is given.
6.	They are beneficial to the society.	They are regarded as against the public welfare.

SHORT PRACTICE QUESTIONS

1. Differentiate between:
 - (a) Coercion and Undue influence.
 - (b) Contract of Insurance and Wagering Agreement.

[Chapter ⇒ 1 Unit : 3] Other Essential Elements... ■ **2.77**

2. Write Short Notes on:
 - (a) Coercion.
 - (b) Person competent to contract.
 - (c) Position of minor's agreement.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Rule of estoppel cannot be exercised by a minor. (2 marks)
- (iv) Consent obtained by Fraud makes the agreement void. (2 marks)

Answer:

(iii) **Incorrect:** Although contracts entered into by minor are void but they can be enforced for the benefit of minor and in this course, this rule of estoppel may be exercised by minor against the other party, if required.

(iv) **Incorrect:** Consent obtained by fraud does not make the contract void. But it makes the contract voidable at the option of the party whose consent has been so obtained. (Sec. 19)

1995 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Social agreements are enforceable in the Courts. (2 marks)

Answer:

Incorrect: Social agreements are not enforceable in the Courts, as they do not contemplate legal relationship.

1995 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (vi) A stranger to the contract cannot enforce the contract. (2 marks)

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Answer:

Correct: A stranger to the contract in general can not enforce the contract, as there is no privity of contract between a stranger and the other parties to the contract.

1996 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) An agreement, the meaning of which is not certain or capable of being made certain is not void. (2 marks)

Answer:

Incorrect: In the words of Section 29 of the Indian Contract Act, 1872, agreements the meaning of which is not certain or capable of being made certain are void. There should be no two meanings of what the parties want to achieve. The agreement will be void, if the meaning of an agreement is neither certain, nor capable of being made certain.

1996 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Commercial impossibility does not make the contract void. (2 marks)

Answer:

Correct: Commercial impossibility is not covered under Section 56 of the Indian Contract Act. This section is related to doctrine of frustration. The frustration is not applicable where there is delay in the performance, or commercial difficulty or an exception of less profit.

1997 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A person who is usually of unsound mind cannot enter into a contract even when he is of sound mind. (2 marks)

Answer:

Incorrect: According to Section 12, a person who is usually of unsound mind but occasionally of sound mind can enter into a contract.

[Chapter ⇒ 1 Unit : 3] Other Essential Elements... ■ 2.79

1997 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) According to the doctrine of "Privity of Contract", a stranger to a contract, if he is beneficiary, can not enforce the contract. (2 marks)

Answer:

Incorrect: According to the Doctrine of 'Privity of Contract', a stranger to a contract cannot sue. But if he is a beneficiary (in whose favour a trust has been created), he can enforce the contract.

1997 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) Transactions incidental to wagering agreements are not void. (2 marks)

Answer:

Correct: In an ordinary sense, a wagering contract is void, but the transactions incidental to wagering agreements are not void. For example a broker in a wagering transactions can recover his, brokerage. In the same way money received by the agent on account of a wagering transaction can be taken back by the principal.

1998 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A contract to take a loan by a boy of sixteen years of age from a moneylender of 50 years old, is a valid contract. (2 marks)

Answer:

Incorrect: In the words of Section 11 of the Indian Contract Act, a person should be major to be competent to contract. A person becomes a major on the attainment of 18 years of old as per Indian Majority Act, 1875. In the case given above contract will be void because of the boy being a minor.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A person who is usually of sound mind, but occasionally of unsound mind is unable to make the contract. (2 marks)

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Answer:

Incorrect: A person who is usually of a sound mind but occasionally of unsound mind is not considered competent to make a contract when he is of unsound mind.

1999 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) It is a mixed question of law and fact whether time was essence of the contract. (2 marks)

Answer:

Correct: According to Section 55 of the Indian Contract Act, 1872, states that time as the essence of contract means that the time is an essential factor and hence the parties concerned with it must perform their promises within the specified time.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) A minor cannot be appointed as an agent, as he is not competent to contract. (2 marks)

Answer:

Incorrect: A minor can be appointed as an agent. According to Section 184, of Indian contract Act, 1972 any person can become an agent, between the principal and the third person, irrespective of whether he has contractual capacity or not.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iv) A contract can be avoided if consent is caused by fraud. (2 marks)

Answer:

Correct: When consent to an agreement is caused by fraud, though the agreement amounts to a contract, such a contract is voidable at the option of the party, whose consent was so obtained.

[Chapter ⇒ 1 Unit : 3] Other Essential Elements... ■ 2.81

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) Social agreements are enforceable in the Courts of India. (2 marks)

Answer:

Incorrect: Social agreement are not enforceable in the courts of India, as they do not contemplate legal relationship.

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A threat to commit suicide does not amount to Coercion. (2 marks)

Answer:

Incorrect: It amounts to coercion since, it is forbidden and punishable by the Indian Penal Code.

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Intentional misrepresentation is 'fraud'. (2 marks)

Answer:

Correct: It amounts to fraud because it is assumed that the party has a reasonable ground to believe his assertion and his intention to put the other party to loss.

2001 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A minor can neither undertake a liability nor receive a benefit under a contract. (2 marks)

Answer:

Incorrect: As per the India Contract 1872, no one can prevent a minor from becoming a promises or a beneficiary, the law does not regard a minor as incapable of accepting a benefit.

2002 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) In order to constitute a valid contract, consideration between two parties must be adequate. (2 marks)

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Answer:

Incorrect : The Court provides that as long as the contract exists it should be supported by consideration. It is not concerned with its adequacy. The adequacy of the consideration is to be concerned by the parties to the agreement.

2002 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) A threat to lodge criminal prosecution on a false charge amounts to coercion. (2 marks)

Answer:

Correct: According to Section 15 of the Indian Contract Act, 1872, Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code 1860. A threat to file or lodge criminal prosecution on a false charge is an offence in itself and hence prohibited. In this way threat amounts to coercion.

SHORT NOTES

1995 - Nov [7] Write short notes on the following:

- (b) Voidable Agreement. (5 marks)

Answer:

Voidable Agreement:

A contract the consent to which is caused by coercion, undue influence, fraud or misrepresentation is voidable at the option of the party whose consent was so caused. (*Bishandeo Narain v. Seogero Rai AIR 1951 SC 280*).

Thus the aggrieved party has the option either to avoid the contract or alternatively, to affirm it. The burden of proving the said elements is on the plaintiff. [*Hims Enterprise v. Ishak Bin Subari (1992) 1 CLJ 132*]. He can exercise his option only once. If the contract is affirmed, it becomes enforceable and if avoided it becomes void (*East India Commercial*

[Chapter ➔ 1 Unit : 3] Other Essential Elements... ■ 2.83

Company v. Collector of Customs AIR 1962 SC 1893). It continues to be valid and enforceable till it is repudiated by the aggrieved party. The application of option by aggrieved party is subject to certain restrictions:

1. When the party, aware of his right to rescind, affirms the contract, the right of rescission is lost.
2. When a party at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.
3. Rescission must be claimed within reasonable time.
4. The right of rescission is lost when a third party, acting in good faith, acquires right in the subject matter of the contract.
5. Rescission is subject to the condition that the party seeking rescission must be in position to restore the benefits he may have obtained under the contract.

Section 19A deals with the contracts affected by undue influence which have been declared as voidable at the option of aggrieved party. Such contracts may be set aside absolutely or partly. Court enjoys discretion.

1996 - May [7] Write short notes on the following:

- (a) Agreements opposed to public policy. (5 marks)

Answer:

Agreement Opposed to Public Policy :- If the court regards an agreement opposed to public policy it is unlawful and it cannot be enforced by either of the parties. These agreements have been declared void by the Indian Contract Act, 1872.

Following are the agreements opposed to public policy:

1. Trading with an alien enemy.
2. Agreements encouraging litigation.
3. Agreements for stifling prosecution.
4. Agreements tending to create interest against duty.
5. Traffic in public offices.
6. Marriage brokerage agreements
7. Agreements in restraint of marriages.
8. Agreements interfering with marital duties.
9. Agreements in restraint of parental rights.

10. Agreements in restraint of legal proceedings.
11. Agreements intending to create monopolies.
12. Agreements in restraint of personal freedom.
13. Agreements in restraint of trade.

A contract having tendency to injure public interest or public welfare, is opposed to public policy, The leading case on this is of *Ratan Chand Hira Chand V. Askar Nawaz Jung (1991) 3SCC67*, it was held that any agreement which tends to promote corruption or injustice or is against the interest of the public is considered to be opposed to public policy.

1997 - May [7] Write short notes on the following:

- (a) Capacity of the parties to a contract. (5 marks)

Answer:

Capacity of parties to contract: Capacity means the competence of the parties to enter into a valid contract. Section 11 of the Contract deals with the competency of parties and provides that every person is competent to contract who is:

1. of the age of majority as per law to which he is subject,
2. of sound mind,
3. is not disqualified from contracting by any law to which he is subject.

The qualification stated above must be fulfilled by the person competent to contract. The first qualification refers to the age of the contracting person. A person attain majority on completing his 18 years. While in case of matters of property majority is attained after completing 21 years of age.

The second qualification requires a person to be of a sound mind at the time of making the contract. he must be capable of understanding it and of forming a rational judgement as to its effect. Following are the person who are not supposed to be of sound mind such as a lunatic, an idiot, a drunken person.

The third qualification requires that a person entering into a contract should not be disqualified by his status while entering into such contracts For example; alien enemy, insolvents, convicts, married women and corporations.

The contract will not be valid if it is entered by the persons who are not competent to contract.

1998 - Nov [7] Write short notes on the following:

- (a) Free consent. (5 marks)

Answer:

Free Consent: In the words of section 10, of the Indian Contract Act, free consent is one of the essential requirement of a valid contract. The consent which is obtained by the free will of the parties on their own accord is called free consent.

Consent is said to be free when it is not caused by (Section 14):

1. Coercion, or
2. Undue Influence, or
3. Fraud, or
4. Misrepresentation, or
5. Mistake.

The contract becomes voidable, when it is obtained by coercion, fraud, undue influence or misrepresentation. But when the consent is obtain by mistake the contract becomes void.

1999 - Nov [7] Write short notes on the following:

- (i) Mere silence as to facts does not amount to fraud. (5 marks)

Answer:

Mere silence as to the facts does not amount to fraud: Mere silence of the party as to certain facts does not actually amounts to fraud. A party to the contract is owing no gratitude to disclose the whole truth to the other party. The Rule of Caveat Emptor is applicable here that is Buyer Beware principal. This principle means that the buyer should be aware of things while making the contract. In these cases there is no duty to speak and silence does not result to fraud. When both the parties are aware of the contract, there is no duty to disclose the facts.

Hence, silence does not amount to fraud. These are two exception to the rule. These are:- (i) where circumstances create a duty the part of the person keeping silence to speak and (ii) where silence in itself is equivalent to speech.

1999 - Nov [7] Write short note on the following:

- (ii) Agreements in restraint of legal proceedings. (5 marks)

Answer:

Agreements in restraint of legal proceedings: Agreements in restraint of legal proceedings comes under Section 28, of the Indian Contract Act, 1872. The section provides that every agreement by which any party thereto is restricted completely from following his rights under or in respect of any contract, by the usual legal proceeding in the ordinary tribunals or which fixes the time within which he may thus enforce his right, is void to that extent. There are some exceptions to it;

1. Arbitration shall be valid in respect of all future disputes in connection with a contract.
2. If the parties agree to refer to arbitration, any question between them which has already arisen, or which may arise in future if it is in writing.

1999 - Nov [7] Write short note on the following:

- (iv) Coercion. (5 marks)

Answer:

Coercion: In simple terms, coercion means threat or force used by one party against the another for compelling him to enter into a contract.

Section 15 of the Contract Act, 1872, defines coercion as, "the committing or threatening to commit any act forbidden by the Indian penal Code or Unlawful detaining or threatening to detain, any property, to the prejudice of any person, with the intention of causing any person to enter into an agreement".

For example: A threatens to shoot B, a friend of C, if C does not let out his house to him. C agrees to do so. Thus, the agreement has been bought by coercion.

2000 - May [7] Write short note on the following:

- (i) When is an agreement in 'restraint of Trade' valid? (5 marks)

Answer:

An agreement in restraint of trade is void [Section 27, Indian Contract Act, 1872]: All agreements in restraint of trade, whether general or partial, qualified or unqualified are void.

However in the following cases, a contract in restraint of trade is valid:

- (a) **Sale of goodwill:** Section 27 itself gives one exception. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on or similar business within specified local limits.
- (b) **Partner's agreements:** A contract between partners to provide that a partners shall not carry on any business other than that of the firm while he is a partner. [Section 11(2)].
- (c) A partner may make an agreement with his partners that on ceasing to be a partner, he will not carry on any business. Similar to that of the firm within a specified period or local limits. [Section 36(2), Indian Partnership Act, 1932].
- (d) A partner may upon or in-anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on business similar to that of the firm within a specified period or local limits such an agreement is valid provided the restrictions are reasonable. (Section 54 of the Indian Partnership Act, 1932)
- (e) A partner may upon sale of goodwill of a firm, make an agreement with the buyer of goodwill that such partner will not carry on any business similar to that of the firm, within a specified period or local limits. Such agreement is valid provided the restrictions are reasonable. [Section 55(3), Indian Partnership Act, 1932].

DISTINGUISH BETWEEN

1994 - Nov [4] (b) Distinguish Between of the following:

- (ii) Fraud and Misrepresentation. (5 marks)

Answer:

Distinction between Fraud and Misrepresentation: Fraud means deliberate misstatement or active concealment of a material fact or any other act fitted to deceive. Misrepresentation is incorrect or false statement or breach of duty giving an advantage to the person committing it but the fallacy or failure is not due to any desire to deceive the other party.

The main points of distinction between the two are as follows:

- (a) **Intention:** In Fraud the intention of the party committing fraud is to deceive the other party, while in Misrepresentation the intention of the party is not to deceive. Misrepresentation is innocent, while fraud is deliberate or willful.
- (b) **Belief:** In fraud the person making the suggestion does not believe it to be true, while in misrepresentation, the party making such suggestion believes it to be true.
- (c) **Rescission and damages:** In misrepresentation, the aggrieved party can rescind the contract or sue for restitution (Sec. 64). But he can not file a suit for damages. In fraud, the remedy available to the aggrieved party is not limited to rescission only, but to damages also.
- (d) **Discovery of truth:** In case of misrepresentation, the aggrieved party cannot avoid the contract if it had the means to discover the truth with ordinary diligence. But in Fraud, where there is active concealment, the contract is voidable, even though the aggrieved party had the means of discovering the truth with ordinary diligence.

1995 - May [6] (b) Distinguish Between of the following:

- (i) 'Unilateral' and 'Bilateral' mistake. (5 marks)

Answer:

Sl. No.	Basis	Unilateral Mistake	Bilateral Mistake
1.	Meaning	When only one of the party to a contract is under a mistake it is called unilateral mistake.	When both the contracting parties misunderstand each other and are at cross purpose, it is bilateral mistake.
2.	Mistake arises	In unilateral mistake, mistake arises only on the part of one of the parties.	Bilateral Mistake arises on the part of both the parties to the contract.

3.	Nature of Contract	Only one party is under a mistake, the contract is not void.	As both the parties are under mistake so the agreement is void.
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1996 - Nov [4] (b) Distinguish Between of the following:

- (i) Fraud and Misrepresentation. (5 marks)

Answer:

Please refer 1994 - Nov [4] (b) (ii) on page no. 87

1999 - May [6] (b) Distinguish Between of the following:

- (i) Coercion and Undue influence. (5 marks)

Answer:

Distinction between Coercion and Undue Influence

Sl. No.	Basis	Coercion	Undue Influence
1.	Definition	Coercion involves threat to use physical force to obtain the consent of the other party.	In undue influence mental or moral pressure is used to get the consent of the other party.
2.	Parties	Coercion may be committed by any person against any person. Even a strange act may amount to coercion.	Undue Influence must be made by a party to the contract.
3.	Relationship	In coercion, the parties to the contract do not have any definite relationship with each other.	In undue influence the parties under fiduciary relationship.
4.	Intention	In coercion, the parties or party causing coercion has an intention to enter into an agreement.	In undue influence the influencing party uses its position to obtain an unfair advantage over the other party.

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5.	Penalty	An act of coercion may be punishable under the Indian Penal Code.	The act of undue influence may not be punishable.
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2001 - May [4] (b) Distinguish Between of the following:

- (i) Coercion and Undue influence. (5 marks)

Answer:

Please refer 1999 - May [6] (b) on page no. 89

2001 - Nov [4] (b) Distinguish Between of the following:

- (ii) 'Unilateral' and 'Bilateral' mistake. (5 marks)

Answer:

Please refer 1995 - May [6] (b) (i) on page no. 88

2002 - May [4] (b) Distinguish Between of the following:

- (i) Fraud and Misrepresentation. (5 marks)

Answer:

Please refer 1994 - Nov [4] (b) (ii) on page no. 87

DESCRIPTIVE QUESTIONS

1994 - Nov [2] Comment on the following:

- (b) Wagering agreements do not cover insurance contracts. (5 marks)

Answer:

Wagering agreements do not cover insurance contracts: Sec. 30 of the Indian Contract Act defines a wager as an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the even does not happen.

Contract of Insurance also have a resemblance with wagering agreements, since the insurance companies have to pay the insured a certain sum of money after the occurrence of certain event. But wager and insurance contracts have a superficial resemblance. As a matter of fact, the two have difference in basic characters. The difference of the two lies in the following:

[Chapter ⇒ 1 Unit : 3] Other Essential Elements... ■ 2.91

In Insurance contracts, the insured has an insurable interest in the subject-matter of the insurance, such an interest is not there in the wagering agreements. Further in insurance contracts, the insured as well as the insurer both, are interested in safety of the subject-matter, but in wagering agreements, only one party may be interested in the safety of the subject-matter, if any and not both. Moreover in wagering agreements the sum payable is ascertained at the time of making the agreement, but in insurance contracts the insured is indemnified only and is not allowed to take a benefit out of the contract. Further, insurance is beneficial to the public at large, but wager is not. Last but not the least, the amount of premium (consideration) payable by the insured to the insurance company is based on scientific calculations, which is not the case in wagers. On the basis of above explanation, it can safely be said that wagering agreements do not cover insurance contracts. However, if the insured does not have insurable interest in the subject-matter insured, then, in such cases such insurance contracts shall have no distinction with wagering agreements.

1995 - May [2] Comment on the following:

- (a) An agreement entered into by a minor cannot be enforced at law.

(5 marks)

Answer:

An agreement entered into by a minor cannot be enforced at law: Section 11 of the Indian Contract Act provides that "every person is competent to contract who is of the age of majority". This clearly means that a minor is not capable of making a valid contract as he is incompetent to contract. An agreement made with a minor is *void ab initio* (*Mohri bibi vs. Dharma Dass Ghose 1903*) and can not be ratified subsequently but this proposition does not apply to the case in which a contract is entered into by persons of full age on behalf of a minor in a joint family, or when it is entered into by his *de facto* guardian for the benefit or necessity of a minor (*Jwala Parsad vs. Raghbir*). So when a contract is entered into by the guardian of a minor on behalf of and for the benefit of the minor, the minor is liable to be sued on the contract. But the price for these necessities can be recovered from the estate of the minor as he is not liable personally. A contract by a manager or guardian can be specifically enforced by or against the minor if

they are competent to make it and it is for the benefit of the minor (*Gopal Krishna vs. Tukaram 1956*). However, the manager or guardian is not competent to enter into a contract for the purchase of immovable property on behalf of the minor (*Hari charan vs. Kanti Rai*). Moreover, a contract for personal service by minor is void under the Indian law. Under the partnership Act, a minor cannot be a partner in a firm, although he may be admitted to the benefits of partnership.

1995 - May [5] Answer the following:

(a) When is the 'Consent' said to be not free? (5 marks)

Answer:

When consent is not freely given: Section 13 of the Indian Contract Act, 1872, defines the term 'consent' as, "two or more persons are said to consent when they agree upon the same thing in the same sense". It means that the contracting parties must have identity of minds i.e. *consensus - ad idem*. Section 10 of the Act says that 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. It means that not only there should be consent, but the consent of the parties must also be free. The consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such a case the contract becomes voidable at the option of the party whose consent is not free. Various factors which may affect free consent are discussed below:

Coercion: Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (Section 15).

Undue Influence: A contract is said to be induced by "Undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage of another.

Fraud: "Fraud" exists when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, not caring whether it is true or false and (iv) the maker intended the other party to act upon it. It also exists when there is a concealment of a material fact (Section 17).

Misrepresentation: Misrepresentation is a misstatement of a material fact made innocently with an honest belief as to its truth or non-disclosure of a material fact, without any intent to deceive the other party (Section 18).

Mistake: Mistake is a misconception or error. A mistake means that parties intending to do one thing, by error do something else. When an agreement is made under a mistake, it may be a mistake of fact or law.

1995 - Nov [2] Comment on the following:

(b) All agreements in restraint of trade are void. (5 marks)

Answer:

Agreements in Restraint of Trade: All agreements in restraint of trade are void. Section 27 of the Indian Contract Act lays down that every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, the following restraints which are exceptions to the aforesaid general rule are considered as valid in the agreement of trade and do not affect the validity of an agreement.

- (i) **Exception under Section 27 of the Indian Contract Act:** One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; provided that such limits appear to the court reasonable, regard being had to the nature of business.
- (ii) **Exceptions under Partnership Act, 1932:**
 - (a) Agreement requiring a partner not to carry on any business other than that of the firm while he is a partner [Section 11(2)].
 - (b) Restraining an outgoing partner from carrying on a similar business as of the firm [Section 36(2)].
 - (c) Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits if the restrictions imposed are reasonable (Section 54).

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- (d) Any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or local limits, if the restrictions imposed are reasonable [Section 55(3)].
- (iii) Exceptions under judicial decisions e.g. restraining an employee not to serve else-where during his employment or agreement entering into trade combination.

1995 - Nov [2] Comment on the following:

- (c) Mere silence is not a fraud. (5 marks)

Answer:

Silence is not a Fraud: It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

To this rule the following two exceptions are provided:

- (i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contacting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
- (ii) Where the silence is in itself, equivalent to speech.

1995 - Nov [5] Answer the following:

- (b) When may a person be treated as of unsound mind to form a contract? (5 marks)

Answer:

Person of unsound mind:

A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is not capable of understanding it, and of forming a rational judgement as to its effect upon his interests.

[Chapter → 1 Unit : 3] Other Essential Elements... ■ 2.95

According to Section 12 of the Indian Contract Act a person may be treated as of unsound mind to form a contract if he is:

- (i) Idiot, who has completely lost his mental faculties of thinking.
- (ii) Lunatic, a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. But during his lunacy he is incapable he is incapable to form a contract.
- (iii) Drunken or intoxicated person when he is under drunkenness or intoxication.

1997 - May [2] Comment on the following:

- (a) "A minor is liable to pay for the necessities of life supplied to him". (5 marks)

Answer:

Section 68 of the Contract Act, deals with the cases of necessities of life supplied to a minor. The Act provides that "if a person incapable of entering into a contract or anyone, when he is legally bound to support is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be recovered from the property of such incapable person."

Thus, a minor is not personally liable for the payment of necessities supplied to him, the payment for such necessities can be recovered only out of the property of the minor. The supplier will lose the price of necessities, if the minor does not possess any property. What constitutes necessities shall be determined with reference to the status and the circumstances of a particular minor.

Simple example of necessities are food, clothing and shelter but necessities will also include minor's medical expenses, cost of defending a minor's civil or criminal proceedings, provisions for education etc. Loan taken by minor to obtain necessities also bind a minor.

The point to be noted is that the parent or guardian of a minor cannot be made responsible for any good supplied to a minor unless these goods are supplied to a minor as the agent of the parent or guardian.

- 1997 - May [3]** (a) Explain the term 'Fraud' as per the Indian Contract Act. What are its effects upon the validity of a contract? (10 marks)

Answer:

When a wilful representation is made by a party to a contract with the intention to deceive the other party or to induce such party to enter into a contract is called Fraud.

According to Section 17, fraud means and includes any of the following acts:

1. a false suggestion as to fact known to be false or not believed to be true; or
2. the active concealment of a fact with knowledge or belief of the fact; or
3. a promise made without any intention of performing it; or
4. doing any other act fitted to deceive; or
5. doing any such act or making any such omission as the law specially declares to be fraudulent.

Essential elements of the fraud:

The essential elements of the fraud are as follows:

1. There must be representation or assertion and it must be false.
2. The representation or assertion must be of a fact.
3. The party acting on the representation must have suffered some loss.
4. Active concealment of the facts also results into fraud.
5. The statement must have been made with a knowledge of its falsity or without belief in its truth or recklessly.
6. The fraud must have actually deceived the other party.

Effect of fraud:

A contract becomes voidable at the option of the party whose consent to an agreement is caused by fraud.

The remedies available to the aggrieved party are as follows:

1. he may cancel the contract, or
2. he can insist the other party to perform the contract, so that he shall put in the position in which he would have been if the representation made has been true.
3. he can sue for damages.

1997 - Nov [2] Comment on the following:

- (c) A minor can always plead minority. (5 marks)

Answer:

A minor can always plead minority: A minor's agreement being void, so no money can be recovered from him on any type of advance made. A minor cannot be stopped from pleading his minority, even when he procures loan by falsely representing that he is a major, in a suit to recover the amount. In such a case the suit will stand to be dismissed.

A minor's agreement being void, it cannot be specifically enforced against the minor under the Specific Relief Act, The fact that the minor misrepresented his age or by fraud, induced the other party to enter into a contract with him, cannot be used of to make him liable on his contract. Rule of estoppel cannot be pleaded against the minor.

1997 - Nov [5] Answer the following:

- (a) What is coercion? What are the consequences of coercion upon the validity of the contract? (5 marks)

Answer:

Coercion: According to Section 15, "Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any force in the place where the coercion is employed." Following are the essential elements of coercion:

1. There should be clear utterance of threat.
2. The threat must be to commit an act forbidden by the Indian Penal Code.
3. The act must be done with the intention of causing other person to enter into agreement.

Effect of Coercion:

Effect of coercion is given under section 19 of the Act and they are as follows:

1. An agreement whose consent is obtained by coercion is voidable at the option of the party whose consent is so obtained.
2. A person to whom the money has been paid or anything delivered under coercion must repay or return it (Section 72).

1998 - May [2] Comment on the following:

(c) "An agreement by way of wager is not illegal". (5 marks)

Answer:

Liability of wagering agreement:

1. Wagering Agreement are void as per section 30 of the Indian Contract Act.
2. Though the agreement are void and unenforced it is not forbidden by law.
3. In other words it can be said that wagering agreement are void but not illegal.
4. But in the States of Gujarat and Maharashtra, wagering agreements are declared to be illegal.
5. Thus, a broker can recover his brokerage in a wagering transaction.

1998 - May [5] Answer the following:

(a) Who are disqualified persons to do the contract? (5 marks)

Answer:

Disqualified Persons: Following are the person who are not complements to contract as per Section 11 of the Indian Contract act, 1872:

1. Minor.
2. Person of unsound mind.
3. Person disqualified by law such as:
 - an alien enemy.
 - foreign sovereigns and ambassador.
 - Insolvents.
 - Convicts.
 - Corporation.
 - Married Women.
 - Professional person.
4. Under Article 299 of the constitution of India, the President of India, the governor of the state and their agents are not personally liable for the contracts made under the concerned government.
5. If a public body or person is empowered by legislation with certain powers and duties, those person or bodies are not in a position to enter into any contract.

1998 - May [6] (a) What is meant by agreement in restraint of trade? Describe in brief the various exceptions thereto. (10 marks)

Answer:

According to Section 27 of the Indian Contract Act, 1872 an agreement seeking to hold a person from exercising a lawful profession, trade or business of any kind is void to that extent. Public policy wants that every person be at freedom to work for himself and should not be at liberty to prevent himself or the state of his labour, skill or talent by any contract that he enters to. This will avoid competition and will have a monopolistic tendency which is not in the favour of public and society both.

But there are certain exception to this rule; The exception are divided in two broad heads:

(1) Statutory Exception

(2) Common Law exceptions.

(1) **Statutory Exception are the exception created by statutes:**

- (i) **Sale of goodwill:** If a person purchases the business of another person and pays for its goodwill, then such purchaser can have reasonable restriction on the trade of the seller of the goodwill (Section 27).
- (ii) **Partners competing business:** As long as a person remains a partner of a firm, he is restrained from carrying on a similar business (Section 11(2) of the Partnership Act).
- (iii) **Rights of outgoing partner:** A partner may agree with his partners that on leaving the firm, he will not carry on a similar business within a specified period or within specified local limits. (Section 36(2) of the Partnership Act).
- (iv) **Partner's similar business on dissolution:** According to 54 of the Partnership Act, partners may in anticipation of the dissolution of the firm, agree that all as some of them shall not carry on a business similar to that of firm within specified local limits.
- (v) **Agreement in restraint of trade:** Any partner on the sale of the goodwill of a firm makes an agreement with the buyer that such partners. will not carry on any business similar to that of the firm within a specified period or within local limits (Section 55 (3) of the partnership Act).

(2) Exception under the common law arises from the judicial interpretation:

- (i) **Service agreement:** An agreement of service, by which a person binds himself during the term of agreement to not to take up service with any one else. Or not to compete with his employer is valid.
- (ii) **Trade combination:** Trade combination with the object of regulating business are desirable in public interest.

1998 - Nov [2] Comment on the following:

- (a) Mere silence as to facts does not amount to fraud. (5 marks)

Answer:

Mere silence as to the facts does not amount to fraud :- Mere silence of the party as to certain facts does not actually amounts to fraud. A party to the contract is owing no gratitude to disclose the whole truth to the other party. The Rule of Caveat Emptor is applicable here that is Buyer Beware principal. This principle means that the buyer should be aware of things while making the contract. In these cases there is no duty to speak and silence does not result to fraud. When both the parties are aware of the contract, there is no duty to disclose the facts.

Hence, silence does not amount to fraud. These are two exception to the rule. These are:- (i) where circumstances create a duty the part of the person keeping silence to speak and (ii) where silence in itself is equivalent to speech.

1999 - Nov [3] (i) State the exceptions to the rule that "a stranger to a contract cannot sue". (10 marks)

Answer:

Stranger to a Contract: It is a general rule of contract that a person who is not a party to the contract can not sue on it. This specifies that unless there is a privity of contract a party cannot sue on a contract. Privity of contract means the relationship subsisting between the parties to a contract. It means that no one but the parties to a contract can be bound by it or be entitled under it.

A stranger to a contract cannot sue except in the following cases:

1. In case of trust, the beneficiary of the trust is in a position to enforce the contract even though he is a stranger to it.
2. In case the contract is entered into by an agent, it can be enforced by the principal.
3. Where an arrangement is made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of the person, he can sue although he is not a party to the agreement.
4. Where the promisor himself has created privity of contract by his conduct he is in a position to sue.
5. A stranger to a contract can sue for the money made payable to him by it where the money is charged on immovable property.

1999 - Nov [5] Explain the following:

- (i) Mistakes of fact. (5 marks)

Answer:

Mistake of fact: Mistake of fact may be divided into two groups that is:

1. Bilateral Mistake
 2. Unilateral Mistake
1. **Bilateral mistake:** According to Section 20 of the Act, Bilateral mistake is a mistake, "Where both the parties to an agreement are under a mistake, as to a matter of fact essential to the agreement, the agreement is void."
Bilateral mistake may relate to the existence, identity, title, quantity and price of the subject matter, However, an erroneous opinion as to the value of a thing which forms the subject matter of the agreement is not to be deemed a mistake as to matter of fact (Explanation to section 20).
 2. **Unilateral Mistake of fact:** Section 22 of the Act deals with unilateral mistake, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact".

2000 - May [2] Comment on the following:

- (iii) All illegal agreements are void but all void agreements are not illegal. (5 marks)

Answer:

All illegal agreement are void but all void agreements are not illegal:
The agreement which has no legal effect is a void agreement. In the case of the illegal contract, there is no legal effect in between the parties but the transaction collateral to such a contract is further effected.

A contract which is termed illegal and is void ab initio, is treated by law as if it had not been made at all. Thus, parties to an illegal contract cannot get the help from court of law. For example, in the case of an illegal contract for the sale of goods, the buyer though has paid the price, cannot sue for non delivery. The price cannot be recovered by the seller who has to make the delivery. No suit can be filed in respect of an illegal contract.

2000 - Nov [2] Comment on the following:

- (a) A minor can always plead minority. (5 marks)

Answer:

Please refer 1997 - Nov [2] (c) on page no. 96

2000 - Nov [5] Comment on the following:

- (a) When does the mistake of the parties invalidate a contract? (5 marks)

Answer:

'Mistake' has not been defined anywhere in the Indian Contract Act, 1872. But Section 20 of the act provides the effect of the term 'mistake' which is "when both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is declared void."

Following conditions must be fulfilled before a contract can be avoided on the ground of mistake:

1. There must be a mistake as to the formation of contract.
2. The mistake must relate as to the matter of fact and not of law.
3. The mistake must be of both the parties i.e. bilateral.
4. The matter of fact must be essential to the agreement.

2000 - Nov [7] Comment on the following:

- (a) Capacity to contract. (5 marks)

Answer:

Capacity of parties to contract: Capacity means the competence of the parties to enter into a valid contract. Section 11 of the Contract deals with the competency of parties and provides that every person is competent to contract who is:-

1. of the age of majority as per law to which he is subject,
2. of sound mind,
3. is not disqualified from contracting by any law to which he is subject.

The qualification stated above must be fulfilled by the person competent to contract. The first qualification refers to the age of the contracting person. A person attains majority on completing his 18 years. While in case of matters of property majority is attained after completing 21 years of age.

The second qualification requires a person to be of a sound mind at the time of making the contract. He must be capable of understanding it and of forming a rational judgement as to its effect. Following are the persons who are not supposed to be of sound mind such as a lunatic, an idiot, a drunken person.

The third qualification requires that a person entering into a contract should not be disqualified by his status while entering into such contracts. For example; alien enemy, insolvents, convicts, married women and corporations.

The contract will not be valid if it is entered by the persons who are not competent to contract.

2001 - Nov [2] Comment on the following:

- (a) A Stranger cannot sue the parties to a contract. (5 marks)

Answer:

Please refer 1999 - Nov [3] (i) on page no. 100

2001 - Nov [2] Comment on the following:

- (b) Mere silence, as to fact, of a party to the contract, amounts to fraud. (5 marks)

Answer:

Please refer 1998 - Nov [2] (a) on page no. 100

2001 - Nov [7] Write brief answers the following:

- (a) Contract by a person of unsound mind. (5 marks)

Answer:

Contract by person of unsound mind: A person is said to be of sound mind, when he is capable of understanding the terms of the contract and is able to make a rational decision as to its effect upon his interest.

Thus, the person is of unsound mind when:

- (a) he is not in a position to make a contract or understand it.
(b) he cannot form a proper and reasonable judgement as to how the contract will affect his interest.

Generally, it is assumed that every person is of a sound mind unless it is proved otherwise. A person who is usually of sound mind but occasionally of unsound mind cannot make a contract, when he is of unsound mind. Thus, a drunkard is not competent to contract when he is drunk.

Hence, the person of unsound mind are not competent to contract.

2002 - May [2] Briefly answer the following:

- (c) An agreement in restraint of trade is void. (5 marks)

Answer:

According to Section 27 of the Indian Contract Act, 1872 an agreement seeking to hold a person from exercising a lawful profession, trade or business of any kind is void to that extent. Public policy wants that every person be at freedom to work for himself and should not be at liberty to prevent himself or the state of his labour, skill or talent by any contract that he enters to. This will avoid competition and will have a monopolistic tendency which is not in the favour of public and society both.

But there are certain exception to this rule; The exception are divided in two broad heads:

- (1) Statutory Exception
 - (2) Common Law exceptions.
- (1) Statutory Exception are the exception created by statutes:**
- (i) **Sale of goodwill:** If a person purchases the business of another person and pays for its goodwill, then such purchaser can have reasonable restriction on the trade of the seller of the goodwill (Section 27).

- (ii) **Partners competing business:** As long as a person remains a partner of a firm, he is restrained from carrying on a similar business (Section 11(2) of the Partnership Act)
 - (iii) **Rights of outgoing partner:** A partner may agree with his partners that on leaving the firm, he will not carry on a similar business within a specified period or within specified local limits. (Section 36(2) of the Partnership Act).
 - (iv) **Partner's similar business on dissolution:** According to 54 of the Partnership Act. partners may in anticipation of the dissolution of the firm, agree that all as some of them shall not carry on a business similar to that of firm within specified local limits.
 - (v) **Agreement in restraint of trade:** Any partner on the sale of the goodwill of a firm makes an agreement with the buyer that such partners. will not carry on any business similar to that of the firm within a specified period or within local limits (Section 55 (3) of the Partnership Act).
- (2) Exception under the common law arises from the judicial interpretation:**
- (i) **Service agreement:** An agreement of service, by which a person binds himself during the term of agreement to not to take up service with any one else. Or not to compete with his employer is valid.
 - (ii) **Trade combination:** Trade combination with the object of regulating business are desirable in public interest.

2002 - May [5] Briefly answer the following:

- (b) Who are disqualified by law from entering into a valid contract? (5 marks)

Answer:

Essential element to form a valid contract, as per **Section 11** is stated as "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject".

Analysis of Section-11

This section deals with personal capacity of three types of individuals only. Every person is competent to contract who:

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- (a) has attained the age of majority,
- (b) is of sound mind and
- (c) is not disqualified from contracting by any law to which he is subject.

2002 - Nov [2] Briefly answer the following:

- (b) Law relating to minor's contracts. (5 marks)

Answer:

Law relating to minor's contract:

- (i) An agreement entered into by a minor is altogether void.
- (ii) **Minor can be a beneficiary:** Though a minor is not competent to contract, there is nothing in the Indian Contract Act, 1872, which prevents him from making the other party bound to be minor.
- (iii) Minor can always plead minority.
- (iv) **Ratification on attaining a majority is not allowed:** As a minor's agreement is void, he cannot validate it by ratification on attaining majority.
- (v) Though a minor's agreement is void, his guardian can under certain circumstances enter into a valid contract as minor's behalf.
- (vi) Under section 68 (Indian contract Act, 1872), any person would be entitled to reimbursement out of minor's estate, for necessaries supplied to him or to his family.

2002 - Nov [7] Briefly answer the following:

- (b) Explain Coercion and undue influence in a contract. (5 marks)

Answer:

Coercion and Undue influence may be distinguished in the following manner:

- (a) Coercion involves the physical force or threat. The aggrieved party is competent to make the contract against its will. While undue influence involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
- (b) Coercion involves committing or threatening of to commit any act forbidden by Indian Penal Code, detaining or threatening to detain property of another person. But no such illegal act is committed or a threat is given in case of undue influence.

[Chapter ⇒ 1 Unit : 3] Other Essential Elements... ■ 2.107

- (c) It is not necessary that in case of coercion that there must be some sort of relationship between the parties. But some sort of relationship between the parties is absolutely necessary in the case of undue influence.
- (d) Coercion need not proceed from the promisor nor need it be the directed against the promisor. Undue influence is always exercised between parties to the contract.
- (e) The contract is voidable at the option of the party where consent has been obtained by coercion. Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or endorse it in a modified form.
- (f) In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party. But in case of the undue influence the court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.

2018 - May [2] (c) (ii) Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". (2 marks)

Answer:

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

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

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

2018 - May [6] (a) Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872? (5 marks)

Answer:

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

1. The suggestion, as a fact of that which is not true, by one who does not believe it to be true.
2. Active concealment of fact by one having knowledge or belief of the fact.
3. A promise made without any intention of performing it.
4. An act fitted to deceive.
5. Any act declared as fraudulent by law.

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

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

2019 - June [2] (a) "Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act 1872? (7 marks)

Answer:

Mere silence is not fraud:

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

A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the buyer beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud.

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

Silence is fraud:

1. Duty of Person to Speak:

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

Following contracts come in this category:

- (a) **Fiduciary relationship:** Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts, known to him.
 - (b) **Contracts of Insurance:** In such contracts, there is an implied condition that full disclosure of all material facts shall be made, else contract is avoidable.
 - (c) **Contracts of Marriage:** Every material fact must be disclosed by the parties to a contract of marriage.
 - (d) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.
 - (e) **Share Allotment Contracts:** Person issuing "prospectus" at the time of public issue of shares/debentures, have to disclose all material facts within their knowledge.
- 2. Where silence itself is equivalent to speech:**

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

2019 - June [6] (a) Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. (5 marks)

Answer:

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

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

- (i) **Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.
- (ii) **Position to dominate the will:** The relation between the parties are such that one of them is in a position to dominate the will of the other.

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- (iii) **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.
- (iv) **Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

2019 - Nov [6] (a) Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872. (5 marks)

Answer:

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






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

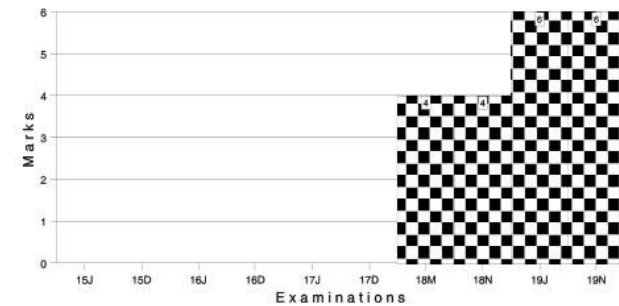
- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) The party receiving any benefit under the voidable contract must restore such benefit so far as may be to the person from whom it was received.
- (iii) A person to whom money has been paid or delivered under coercion must repay or return it.

CHAPTER	
1	The Indian Contract Act, 1872
Unit: 4	Performance of Contract

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

-  Objective
-  Short Notes
-  Distinguish
-  Descriptive
-  Practical



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: Describe the Obligations of parties to contract Under Indian Contract Act,1872.

Answer:

Performance of Contract: It is one of the modes of discharging the contract. It is the completion or fulfilment of obligations by the respective parties to a contract.

As per Section 37 of the Indian Contract Act, the parties to the contract must either—

1. Perform their respective promises, or
2. Offer to perform the same unless such performance is dispensed with or excused under the provisions of any other law.

Q.2: By Whom a contract may be performed.

Answer:

- **Promisor himself:** Section 40 states that "if it appears from the nature of the case that it was the intention of the parties to a contract that any promise contained in it needs to be performed by the promisor himself, such promise must be performed by the promisor himself." Contracts involving the exercise of personal skill or diligence, or which are formed on the personal confidence between the parties need to be performed by promisor himself.
- **Agent:** If the contract is not found on the personal consideration, the promisor or his representative may employ a competent person to perform it.
- **Representatives:** Contract involving the use of personal skill or found to be on personal consideration comes to an end on the promisor's death. In other cases, the legal representatives of the deceased partner are bound to perform it unless the contrary intention appears from the contract; but their liability is limited to the value of the property they inherit from the deceased.

- **Third person:** As per Section 41, "if the promisee accepts the performance of the promise by a third person, he cannot afterwards enforce it against the promisor".
- **Joint promisors:** In case of joint promise, promisee may compel one or more of the joint promisors in the absence of contract to contrary. If any of them dies, his legal representatives must perform the promise jointly with the surviving promisors.

Q.3: Distinguish between Succession and Assignment.

Answer:

Succession	Assignment
1. Transfer of rights and liabilities of a deceased person to his legal representative is called succession.	Transfer of rights by a person to another person is called assignment.
2. It takes place on death of a person.	It takes place during the life time of a person.
3. It is not a voluntary act.	It is a voluntary act.
4. It may take place even without a written document.	It requires execution of assignment deed.
5. All rights and liabilities of a person are transferred.	Only rights of a person are transferred.
6. No notice is required to be given to any person.	Notice must be given to the creditor.
7. No consideration is required.	Consideration is required.

Q.4: Briefly explain the Effects of refusal to accept an offer of performance.

Answer:

The promisor makes an offer of performance to the promisee, but the offer to perform is not accepted by the promisee.

Q.5: How many types of tender are there and Describe the Cements of Tender?

Answer:

- **Tender of goods:** attempted performance to promise to do something.
- **Tender of money:** attempted performance of promise to pay something.

Essentials of valid tender:

- Must be unconditional.
- Must be for the whole obligation.
- Must be given at proper time.
- Must be given at proper place.
- Must give a reasonable opportunity of inspection.
- Party giving tender must be willing to perform his obligation.
- Must be paid to the proper person.
- Must be made for the exact amount of money.

Q.6: Describe the Effects of Refusal of party to perform promise.

Answer:

The aggrieved party can:

- (i) Terminate the contract.
- (ii) Indicate by words or by conduct that he is interested in its continuance. If promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground immediately.

In both the cases, promisee would be entitled to claim damages that he suffered as a result of breach.

Q.7: What is the Liabilities of Joint Promisor and Promisee ?

Answer:

- **Section 42:**

If two or more persons have made a joint promise, ordinarily all of them during their life time must jointly fulfill the promise. After the death of any of them, his legal representative jointly with the survivor or survivors should do so.

- **Section 43:**

1. All the joint promisors are jointly and severally liable. However, the contract between joint promisor may provide otherwise.
2. A joint promisor may claim contribution from other joint promisors, if he is compelled to perform the whole promise.
3. A joint promisor may claim contribution from other joint promisors, if any other joint promisor makes a default in performance of his promise.

- **Section 44:**

Where one of the joint promisor is released, other joint promisors shall continue to be liable.

Q.8: What are the Rights of joint promisees?

Answer:

- U/s 45, when a person has made a promise to several persons, then unless a contrary intention appears from the contract, the right to claim performance rests between him and them during their lifetime.
- When one of the promisees dies, the right to claim performance rests with the legal representative jointly with the surviving promisees.
- When all the promisees dies, the right to claim performance rests with their legal representatives jointly.

Q.9: Describe the Time and place of performance of the promise.

Answer:

Time of Performance:

- **Section 46:** Where no time is specified for the performance of the contracts, the performance must be done within a reasonable time.

Day, Hour and Place of Performance:

- **Section 47:** Where the promisor undertaken to perform a promise on a certain day, he may perform it at any time during the usual hours of business, on that particular day and place as decided by the contract.
- **Section 48:** If a promisee is made to perform on a certain day and the promisor has undertaken to perform it without the application by the promisee, it's the duty of promisee to apply for performance at a proper place and within the usual business hours.

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- **Section 49:** If no specific place of performance is fixed by contract, it is the duty of promisor to apply to the promisee to appoint a reasonable place for performance.

Manner/Mode of Performance:

- **Section 50:** Performance should be made in manner or at time prescribed or sanctioned by the promisee.

Q.10: What do you understand by Reciprocal Promise and Performance of Reciprocal Promise ?

Answer:

- If the contract consists of reciprocal promises, performance is not necessary unless the second party is willing to perform is reciprocal promise.
- Reciprocal promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of other, hence both the promises should be performed simultaneously.
- The order of performance may sometimes be indicated not expressly, but by nature of the transaction, where it is not expressly fixed by contract, they shall be performed in that order which the nature required.
- If the contract contains reciprocal promises, the contract becomes voidable if one party to the contract prevents the other from performing his promise and he is entitled for compensation for any loss suffered due to non-performance.
- If contract of reciprocal promises cannot be performed till the other promise is performed, promisor fails to perform his part, such promisor cannot claim compensation but has to pay compensation for any loss suffered by other party.
- **Section 55:** Where a party to a contract promises to do a certain thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of promisee, if the intention of parties was that the time should be the essence of the contract.
- If the time was not the essence of the contract and if contract is not performed at or before the specified time, then contract does not become voidable but promisee is entitled to compensation for any loss suffered.

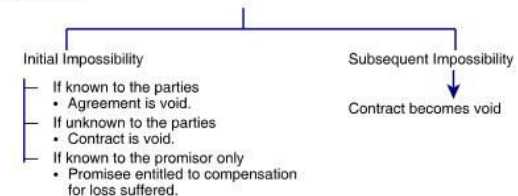
[Chapter ⇒ 1 Unit : 4] Performance of Contract ■ 2.117

- If due to failure of performance of contract at the agreed time, the contract became voidable, but promisee accepts performance at any other time, then he is not entitled to any compensation for loss unless he gives prior notice to the promisor of his intention to do so.
- Contract cannot be avoided where time is not essential, promisee there is only entitled to compensation for delay.
- Even where time was essential, promisee may waive his right to repudiate the contract and if promisor fails to perform the promise within stipulated time, promisee may accept performance at some other time and is not entitled to any compensation for delay unless he gives prior notice to the promisor of his intention to do so.
- If contract containing reciprocal promise, first to do certain thing which are legal and secondly, under specified circumstances, to do certain things which are illegal, first set of promise is valid while the second being illegal is void agreement.

Q.11: How Many Types of Impossibilities are there ?

Answer:

Section 56: An agreement to do an impossible act is void. Impossibility can be of two types:



Q.12: Describe the Appropriation of payments.

Answer:

- (i) If debt to be discharged is indicated while making payment, then payment is to be applied according to instruction.

- (ii) If debt to be discharged is not indicated while making payment, creditor may apply payment at his discretion to any lawful debt actually due and payable to him from debtor whose recovery is not time barred.
- (iii) If no appropriation regarding payment is made by both the parties, FIFO basis will apply on the basis of time.

Q.13: Which is a Contract which need not be performed — with the consent of both the parties ?

Answer:

- **Section 62:** If the parties to the contract agrees to
 - (i) substitute a new contract for it, or
 - (ii) rescind it, or
 - (iii) alter it.
- **Section 63:** If the promisee
 - (i) dispenses with or remits, wholly or in part, the performance of the promise made to him.
 - (ii) extend the time for such performance.
 - (iii) accepts any satisfaction for it.
- **Section 64:** If the person at whose option it is voidable rescinds the contract.
- **Section 65:** If the agreement contract is discovered to be void, the person who has received an advantage under such agreement or contract is required to restore the same or make compensation for it from whom he received it.
- **Section 66:** A rescission must be communicated to other party in the manner similar to communication of proposal.
- **Section 67:** If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promisee, contract need not be performed.

Q.14: How Many Modes of Discharge of Contract are there ?

Answer:

It means termination of contractual relations between the parties to a contract.

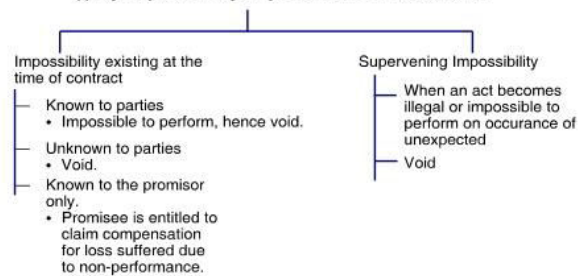
Modes of Discharge of Contract:

1. **By performance:** It occurs when the parties to the contract fulfill their obligations arising under the contract within the time and in prescribed manner. It may be:
 - (a) Actual performance
 - (b) Attempted performance
2. **By mutual agreement:** The parties may enter into a fresh agreement which provides for the extinguishment of their rights and liabilities of original contract. Important methods of discharge by fresh contract.
 - (a) **Novation:** It occurs when an existing contract is substituted by a new one, either between same parties or between the new ones.
 - (b) **Rescission:** A occurs when only the old contract is cancelled and no new contract comes to exist in its place.
 - (c) **Alteration:** It occurs when the terms of contract are so changed by mutual agreement that have the effect of substituting a new contract for the old one.
 - (d) **Remission:** It refers to acceptance of less fulfilment of the terms of promise.
 - (e) **Waiver:** It refers to the abandonment of the rights by the party who is entitled to claim performance of the contract.
 - (f) **Acceptance:** Of any other satisfaction it occurs when the party entitled to claim performance accepts any other satisfaction instead of the performance of the contract.
3. **By Lapse of time:** It occurs if a contract is not performed within a specified period as prescribed by the Limitation Act, 1963.
4. **By operation of law:** It occurs when the contract is discharged by operation of law which includes—
 - (i) **Material Alteration:** Where it is done without the knowledge and consent of the other, contract can be avoided by other party.
 - (ii) **Insolvency:** It can be done under certain particulars circumstances.
 - (iii) **Death of a promisor:** Contract involving personal skill or expertise of promisor. When promisor dies, it cannot be performed by anyone else and hence comes to an end.
 - (iv) **Merger of rights:** If an inferior rights in a contract is merged into a superior right by the party.

Q.15: How Many Types of Impossibilities of Performance/Frustration are there Describe them ?

Answer:

(i) By impossibility of performance /frustration



(ii) Discharge by supervening impossible is done in following ways:

- (a) Death or personal incapacity
- (b) Destruction of subject – Manner
- (c) Non-existence or non-occurrence or certain essential things
- (d) Change of law
- (e) Declaration of war

(iii) Discharge by supervening illegality: If after making the contract, its performance becomes impossible due to alteration of law or act of any person, it is discharged.

(iv) Cases not covered by subsequent impossibility:

- (a) Partial impossibility
- (b) Commercial impossibility
- (c) Difficulty of performance
- (d) Default of a third party
- (e) Strikes, Lockouts, etc.

Q.16: Describe the Types of breach of contract.

Answer:

There are Two Types of Breach of Contract:

- (a) **Actual Breach:** If one party defaults in performing his part of the contract on due date.
- (b) **Anticipatory Breach:** When a person repudiates the contract before the stipulated time for its performance has arrived.

SHORT PRACTICE QUESTIONS

1. Write short notes on:
 - (a) Novation
 - (b) Rescission
2. Distinguish between succession & Assignment.
3. When can a contract be said as discharge.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) A stranger to the contract can enforce the contract. (2 marks)

Answer:

Incorrect: Stranger can not enforce the contract, since there is no privity of contract between him and the contracting parties. [**Dunlop Pneumatic Tyre Co. vs. Selfridge Co. (1915)**].

1995 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) Performance of the contract may be made only by the parties to the contract. (2 marks)

Answer:

Incorrect: Except specifically required, a contract may be performed by the promisor's representative or any other person employed by the promisor. Contracts involving the exercise of personal skill, taste or credit or otherwise founded on special personal confidence between the parties cannot be performed by a deputy (Section 40).

1996 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) A promise under a contract can be performed only by the promisor himself. (2 marks)
(v) When persons reciprocally promise, first to do certain legal acts and secondly to do certain illegal acts, the whole agreement is void. (2 marks)

Answer:

(iii) **Incorrect :** Where the promise under a contract is not founded upon a personal consideration, it may be performed as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- (v) **Incorrect:** According to Section 57 of the Indian Contract Act, 1872, where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

1996 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) When the promisee does not accept the offer of performance, the promisor is not responsible for non-performance. (2 marks)

Answer:

Correct: The rule under section 38 of the Indian Contract Act is the "where a promisor has made an offer of performance, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract. However, such offer is required to fulfill certain conditions prescribed in the said section.

1997 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) Payments made by a debtor are always appropriated in a chronological order. (2 marks)
(iv) Cancellation of a contract by mutual consent of the parties is called waiver. (2 marks)

Answer:

(iii) **Incorrect:** Payments made by a debtor to the creditor are to be appropriated as per the provisions stated under section 59 to 61 of the Indian Contract Act.

(iv) **Incorrect:** It is not a waiver but it is called Rescission.

1998 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) In discharge of the whole claim a party to the contract agrees to accept a lesser amount then due, from the other party is a valid contract inspite of inadequate consideration. (2 marks)

Answer:

Correct : According to Section 63 of the Indian Contract Act, 1872, a party may dispense with or remit wholly or in part, the performance of the promise made to him. Thus, a promise to accept a lesser amount then due, from the other party is a valid contract inspite of the inadequate consideration

1998 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) If the promisees are joint, the right to claim performance is joint and not joint and several. (2 marks)

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Answer:

Correct: Section 45 of the Contract Act lays down that when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with representatives of all jointly. This rule is applicable subject to contrary intention being shown by the contract. Accordingly, all the joint promisees should sue the promisor jointly and not joint and several.

1999 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

(iv) A promise to pay a time barred debt is not enforceable. (2 marks)

Answer:

Incorrect : A promise to pay a time barred debt is enforceable, if it is in writing and signed by the promisor or by his agent authorised to do so. The promise may be to pay the whole or any part of the debt [Section 25(3) Indian Contract Act, 1872].

2001 - May [1] State with reasons whether the following statement is Correct or Incorrect:

(iv) Reciprocal promises to do certain things legal and other illegal, make such promises void. (2 marks)

Answer:

Corrects: Where persons reciprocally promises to do certain things legal and to do certain things illegal, the set to do the things legal is a contract, but to do the things illegal is void agreement (Section 57 of Indian Contract Act, 1872).

2001 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

(iii) The original contract between the parties must be performed even when the parties agree to substitute it with a new contract. (2 marks)

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Answer:

Incorrect: According to Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute a new contract for the old contract, or to rescind or alter it, the original old contract is not required to be performed since substitution means rescinding the old contract or altering the terms in the old contract. The discharge of old contract is a consideration for the new one.

SHORT NOTES

1995 - May [7] (b) Write short note on:

Appropriation of payment.

(5 marks)

Answer:

Appropriation of Payments: Sections 59 to 61 of the Contract Act, 1872 enact the rules of appropriation of payment of English Law is laid down in Clayton's case with certain modifications, which may be reproduced below:

(i) **Application of Payment where debt to be discharged is indicated**

(Section 59): Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

(ii) **Application of payment where debt to be discharged is not indicated (Section 60):** Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

- (iii) **Application of payment where neither party appropriates (Section 61):** Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
- (iv) **Appropriation towards interest:** When the debtor makes a part payment without indicating the appropriation (whether towards principal or interest) in such cases, the payment must first be adjusted towards interest and the balance towards the principal amount.

1997 - Nov [7] (c) Write short note on:

Appropriation of payment. (5 marks)

Answer:

Please refer 1995 - May [7] (b) on page no. 125

1998 - Nov [7] (b) Write short note on:

Rescission (5 marks)

Answer:

Rescission: Rescission is the electing to avoid a contract and treat as not binding when it is void or voidable or terminable by a party. It means when a contract is broken by one party, the other party may treat the contract as rescinded. In such a case is absolved of all his obligations under the contract as rescinded. In such a case is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

Rescission may occur:

- (i) By mutual consent of the parties, or
- (ii) Where a party fails in the performance of his obligation, the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract, or
- (iii) By the party whose consent has not been given freely.

Rescission may be total or partial. Total rescission is the discharge of the entire contract. Partial rescission is the variation of the original contract by (a) rescinding some of the terms of the contract or (b) substituting new terms for the ones which are rescinded, or adding new terms without rescinding any of the terms of the original contract.

2000 - Nov [2] (b) Write short note on:

Appropriation is a right primarily of the debtor and for his benefit.

(5 marks)

Answer:

When a debtor who owes several debts to the same creditor makes a payment which is insufficient to satisfy the whole indebtedness, a problem arises as to how to appropriate the given payment. Sections 59 to 61 of i.e. Indian Contract Act, 1872 lay down the following rules:

1. 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.
2. if there are no express instructions, then the debtor's implied intention should be gathered from the circumstances adhering to the payment and the appropriation must be done accordingly.
3. if there is no express or implied direction of the debtor then the creditor had an option to apply the payment to any debt lawfully due from the debtor including times observed debt (Clayton's case).
4. where the debtor as well as the creditor had not made the appropriation. Then the payment is to be applied in discharge of the debts in order of time, whether or not they are time barred. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.
5. if payment has been made without expressly stating whether it is interest or principal, payment is to be applied towards interest first and then the balance to principal.

Thus, it is quite clear from the above that it is always not the case where appropriation is a right primarily of the debtor and for his benefit. It depends upon circumstances of a particular case.

2001 - May [2] (b) Write short note on:
Reciprocal promises are to be performed simultaneously. (5 marks)

Answer:

According to Section 51 of the Indian Contract Act, 1872 "when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise".

When the parties agree that the performance of the contract by each part is to be simultaneous, it is necessary that in exchange for the performance of the contract by one party the other party should also be in a position to give simultaneous performance, i.e. he should be ready and willing to perform his reciprocal promise. In a contract of sale of goods, unless otherwise agreed, the delivery of the goods and the payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready to pay the price in exchange for possession of the goods. Readiness and willingness to perform the contract does not mean that the buyer should have the hard cash in his person, or the seller should always continue to have a ready stock of the goods after the making of the contract. It is enough that the buyer, has made arrangement to make the payment, which can be done without undue delay, and the seller on his part arranged for the goods which can be delivered soon after the payment is made. It is of course, necessary that the person should have the ability to perform the contract. If a person is merely mentally prepared or willing to perform the contract but does not have the ability to do so, the other party need not perform the contract. Thus a person who becomes insolvent does not have means of payment in exchange for the goods, he is deemed to be not ready and willing to perform the contract.

2001 - May [6] Write short notes on the following:

- (a) State the rules of appropriation of payments, when :
- (i) the order of discharge of debts is indicated;
 - (ii) the order is not indicated. (10 marks)

Answer:

(a) As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order or payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "Where a debtor, owing several distinct debts to one person makes a payment to him either with express intimation or under circumstances implying that the payment is to or applied to the discharge of some particular debt, the payment, if accepted, most be applied accordingly." Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 60, "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply the money received at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

2002 - May [7] (c) Write short note on:
Doctrine of Frustration (5 marks)

Answer:

Doctrine of Frustration: Part 2 of Section 56 of the Indian Contract Act, 1872 lays down that if the performance of a contract becomes impossible or unlawful after its making due to some event which is beyond the control of the parties, such contract becomes void when such event has accrued. This is known as doctrine of frustration. The performance may become impossible legally or physically.

Following are the causes of frustration:

1. Destruction of subject matter of contract.
2. Death or personal incapacity of the party.
3. Cancellation of an expected event.
4. Subsequent legal changes.
5. Declaration of war.

DISTINGUISH BETWEEN

1996 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Distinguish between Succession and Assignment: When the benefits of a contract are succeeded to be process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life time. But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess. The liability of the son will be limited to the extent of the property inherited by him. In the matter of assignment, however, the benefit of a contract can only be assigned but not the liabilities thereunder. This is because then the liability is assigned, a third party gets involved therein.

On the other hand if a creditor assigns the benefits of a promise, he thereby entitles the assignee to realise the debts from the debtor but where the benefits is coupled with a liability or when a personal consideration has entered into the making of the contract then the benefit cannot be assigned.

1996 - May [6] (b) (ii) Briefly explain the distinguish between Novation and Alteration. (5 marks)

Answer:

Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases the original contract need not be performed. Still there is a difference between these two:

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

1999 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Please refer 1996 - May [4] (b) (i) on page no. 130

2001 - May [6] (b) (ii) Briefly explain the distinguish between Innovation and Alteration. (5 marks)

Answer:

Please refer 1996 - May [6] (b) (ii) on page no. 131

2002 - May [6] (b) (i) Briefly explain the distinguish between Recession and Alteration. (5 marks)

Answer:

Rescission and Alteration: Rescission means cancellation of the contract. If by mutual agreement the parties agree to cancel all or some of the terms of the existing contract, it is called rescission of the contract, and then the contract is discharged. A contract can be rescinded before its performance becomes due. Non-performance of a contract by both the parties for a long period, without any complaint, amounts to implied rescission. Rescission may be total or partial. When all the terms of the contract are cancelled, it is total rescission which results in the discharge of the entire contract. When some of the terms are cancelled and some new terms are added, it is partial rescission. Partial rescission results in the variation of the original contract. Section 62 of the Indian Contract Act, 1872 lays down that if the parties to a contract agree to rescind it, the original contract need not be performed. Alteration, other hand, means making a change in the terms of a contract with the consent of all the parties. Alteration discharge the old terms which have been changed and the parties become bound by the original contract with altered terms. Rescission of the contract may be total or partial but alteration is always partial and the original contract can not be altered wholly. The effect of alteration is the same as laid down in Section 62 of the Indian Contract Act, 1872 i.e. the original contract need not be performed.

DESCRIPTIVE QUESTIONS

1997 - May [5] (b) What is "Supervening Impossibility"? What are its effects upon the contract? (5 marks)

Answer:

An impossibility which makes the performance of a contract impossible or illegal, by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, is called Supervening Impossibility. It may arise on account of more than one reasons, which may be enumerated as below:

- (a) Accidental destruction of the subject-matter of the contract, such as loss of property by the occurrence of accidental fire, death of an artist or incapacity of an artist by long illness.
- (b) Non-existence or non-occurrence of a particular state of things, e.g. postponement of the music concert for which the hall was rented out.
- (c) Incapacity to perform a contract of personal services-long illness.
- (d) Change in law, e.g. acquisition of the property by the government.
- (e) Outbreak of war, making the contracting parties as citizens of enemy countries.

Effects: Supervening Impossibility makes the contract void and the parties are released out of their obligations. They need not perform their part of the promises which have not accrued till the date of the impossibility.

1998 - May [3] (a) State in brief the grounds upon which a contract may be discharged. (10 marks)

Answer:

Discharge of contracts: A contract is discharged when the obligation created by it come to an end. A contract may be discharged in any one of the following ways:

- (i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be (a) actual performance or (b) attempted performance. Actual performance is said to have taken place; when each of the parties has done what he has agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender of performance.
- (ii) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed. These principles come in the heads of novation, rescission, alteration remission, accord and satisfaction, owing to the occurrence of an event and waiver.

- (iii) **By impossibility of performance:** The impossibility may exist from its initial stage. In that case, it would be impossibility *an initio*. Alternatively, there may be supervening impossibility which may take place owing to (a) an unforeseen change in law; (b) the destruction of the subject matter essential to that performance; (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady; (e) the declaration of war (Section 56).
- (iv) **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken within the specified period of limitation, the party is deprived of remedy at law. For example, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time barred and hence not recoverable.
- (v) **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promisor, merger of inferior right in the superior right by which the inferior right vanishes, by complete loss of evidence, by insolvency etc.
- (vi) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed a breach thereof. When on the other hand, a person repudiates a contract before the stipulate time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract. (Section 64).
- (vii) **Remission accord and satisfaction:** A promise may dispense with or remit the performance of the promise made to him or may accept any satisfaction of thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction.

- (viii) **Refusal to afford reasonable facilities:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

1998 - May [5] (b) Is it required that parties to the contract must perform the contract personally? (5 marks)

Answer:

Who must perform the contract: Except the contracts which require personal skill and labour, the promise under a contract may be performed by the following persons:

1. **Promisor himself:** If it appears from the nature of the case that it was the intention of the parties to any contract, that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Contracts involving personal skill or those depending upon personal trust and confidence must be performed by the promisor himself (Sec. 40).
2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representatives may employ a competent person to perform it (Section 40).
3. **The Legal Representatives:** Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. On the death, of the promisor, the promisee can compel his legal representatives to perform the promise unless it involves the personal skill of the promisor. However, the liability of the legal representative will not be personal but shall be limited only to the extent of the value of the estate of the deceased promisor inherited by him. (Section 37).
4. **Third Persons:** When the 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 (Section 41).

5. **Joint Promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly (Section 42).

1999 - May [5] (a) Explain the rules under the law of contract as regards to time and place for the performance of the promise. (5 marks)

Answer:

Time and place for the performance of the promise: Section 46 to 50 of the Indian Contract Act, 1872 are relevant regarding time and place for the performance of the promise which are as follows:

1. If no time is specified, the promise must be performed within a reasonable time. The expression 'reasonable' time is to be interpreted having regard to the facts and circumstances of a particular case (Section 46).
2. If a promise is to be performed on a specified date but hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day. Moreover, the delivery must be made at the usual place of business (Section 47).
3. Where no place is fixed, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise. In all cases the promisor must apply to the promisee; here no distinction is made between an obligation to pay money to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation [Section 49].
The foregoing rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.
4. Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business (Section 48).
Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

2000 - May [5] (b) (ii) State the circumstances under which an agreement may be void, since it is impossible to carry it out. (5 marks)

Answer:

Impossibility of Performance [Section 56 of the Indian Contract Act, 1872] : An agreement may be void since it is impossible to carry it out. A contract to do an act, which after the contract is made, becomes impossible, or, by reason of some event which are promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful under the following cases:

- (a) Impossibility existing at the time of contract:
 - (i) if known to the parties.
 - (ii) if unknown to the parties.
 - (iii) if known to the promisor only.
- (b) Supervening impossibility (arising subsequent to the formation of a contract) like destruction of subject matters, non-existence or non-occurrence of a particular state of things or incapacity to perform a contract of personal services or change of law, or outbreak of law or failure of the ultimate purpose.

2001 - May [3] (a) What is meant by Performance of a Contract? By whom the contract can be performed? (10 marks)

Answer:

Performance of contract consists in doing or causing to be done, that which the promisor has promised shall be done. Performance of contract is the completion of legal obligation which arises out of the contract. Every party to the contract is obliged to perform the contract accordingly, unless it is discharged or exempted from the performance.

The parties to a contract must either perform or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the law of contract or any other law (Section 37 Indian Contract Act, 1872). In order that a party could enforce the promises made to him, he should perform his promise or offer to perform then he can ask to the other party to perform his promise unless a contrary intention appears from the contract. Either performance or readiness and willingness to perform the contract is the basic requirement of this section.

By whom contract must be performed?

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- (i) **Promisor himself:** If there is something in the contract to show that there was an intention of the parties, that the performance should be made personally, such promise must be performed by the promisor (Section 40). Such contracts involve personal skill or diligence.
- (ii) **Agent:** Where personal consideration is not required, the promisor or his representative may employ a competent person to perform (Section 40).
- (iii) **Representatives:** Except the contract which involve personal skill and diligence all contracts may be performed by the legal representatives of the deceased promisors unless a contrary intention appears from the contract (Section 37). But their liability under a contract is limited to the value of the property they inherit from the deceased. Where personal skill and diligence is the foundation of the performance such contracts come to an end on the death of the promisor.
- (iv) **Third Persons:** When a promisee accepts performance from a third person, he can not afterwards enforce it against the promisor (Section 41).
- (v) **Joint Promisors:** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract all such persons, during their joint lives, and after the death of any of them, his representatives jointly with the survivor or survivors, and after the death of lost survivor, the representatives of all jointly must fulfil the promise (Section 42 of the Indian Contract Act).

2001 - May [5] (b) When a contract may be discharged by Operation of Law? (5 marks)

Answer:

A contract may be discharged by the operation of law in the following manner:

- (i) **By death:** In contract involving personal skill and/or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

- (ii) **By merger:** Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or same other contract.
- (iii) **By insolvency:** When a person is adjudged insolvent he is discharged from all liabilities incurred prior to his adjudication.
- (iv) **By unauthorised attraction of the terms of a written agreement:** Where a party to a contract makes any material alteration in the contract without the consent of the other party, the other party can avoid the contract. A material alteration is one which changes, in a significant manner, the legal identity or character of the contract or the rights and liabilities of the parties to the contract.
- (v) **By rights and liabilities becoming vested in the same person:** Where the liabilities and rights under a contract vest in the same person, for example, when a bill gets into the hands of the acceptor, the other parties are discharged.

2001 - May [6] (a) State the rules of appropriation of payments, when:

- (i) the order of discharge of debts is indicated;
- (ii) the order is not indicated. (10 marks)

Answer:

As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order or payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "Where a debtor, owing several distinct debts to one person makes a payment to him either with express intimation or under circumstances implying that the payment is to or applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly."

Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 60, "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply the money received at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

2001 - Nov [3] (a) State and explain the various modes whereby a contract may come to an end. (10 marks)

Answer:

Various modes whereby a Contract comes to an end: A contract may be discharged either by an act of the parties or by an operation of law as stated below:

1. **Discharge by performance:** When the parties to the contract fulfil their part of the promise, the contract comes to an end.
2. **Discharge by mutual agreement:** When the parties to the contract agree not to perform the contract on the basis of the principles of rescission, or narration or alteration or remission, the original contract comes to an end.
3. **Discharge by impossibility of performance:** When the performance of the contract becomes impossible owing to (1) an unforeseen change in law or (2) the destruction of the subject matter essential to the performance of the contract, or (3) the non-existence or non-occurrence of particular state of things such as personal incapacity like illness or meeting with an accident or (4) outbreak of war and the party being declared as an alien enemy.

4. **Discharge of lapse of time:** Where a contract is to be performed within a special time and it is not performed within that time or period, the law of limitation applies and the contract comes to an end e.g. creditor not taking any action against the debtor for the recovery of the debt within a period of 3 years.
5. **Discharge by operation of law:** Where law operates in the non-performance of a contract say death of the promisor or insolvency or merger etc.
6. **Discharge by breach of a contract:** Where the party to the contract makes a default in the performance of the contract.
7. Discharge by waiver on the part of either party.
8. Discharge by not providing reasonable facilities for performance by the party to the contract.

2002 - Nov [4] (a) Explain with examples the principles of Novation, Rescission, Alteration and Remission where contracts need not be performed. (10 marks)

Answer:

Novation, Rescission, Alteration and Remission:

(a) Novation (Section 62): Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: A Owns B ₹ 10,000/-. A enters into an agreement with B, and gives B a mortgage or his (A's) estate for ₹ 5,000/- in place of the debts of ₹ 10,000/-. This is a new contract and extinguishes the old.

(b) Rescission (Section 62): Rescission means cancellation of the contract by any party or all the parties to a contract.

Examples: X promises Y to sell and deliver 100 Bales of cotton on 1st October at his godown and Y promises to pay for goods on 1st November. X does not supply the goods. Y may rescind the contract.

(c) **Alteration (Section 62):** Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new one. However, parties to the new contract must not change the contract.

Example: X promises to sell and deliver 100 bales of cotton on 1st October and Y promises to pay for goods on 1st November. Afterwards X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

(d) **Remission (Section 63):** Remission means acceptance by the promisee of a lesser fulfillment of the promise made. Accordingly to Section 63, "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept, instead of it any satisfaction which he thinks fit".

Example 1: A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer to perform the promise.

Example 2: A owes B ₹ 5,000/- A pays to B, and B accepts, in satisfaction of the whole debts, ₹ 2,000/- paid at the time and place at which ₹ 5,000/- were payable. The whole debt is charged.

Example 3: A owes B, under a contract a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of ₹ 2,000/-. This is a discharge of whole debt, whatever may be its amount.

PRACTICAL QUESTIONS

2018 - May [1] (a) X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y becomes insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. (4 marks)

Answer:

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

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

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

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

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

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

2018 - Nov [1] {C} (a) 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 ₹ 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 ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (4 marks)

Answer:

According to the facts of the case it can be clearly observed that the contract entered into by the parties Mr. X and Mr. Y demonstrates a case under the applicability of the provisions of Section 56 of Indian Contract Act, 1872 that States - "A contract to do an act which after the contract is made becomes impossible by reason of some event which the promisor could not prevent becomes void."

In this case Mr. X has promised to supply 50 tons of sugar to Mr. Y for which Mr. Y has paid an amount of ₹ 50,000 in advance according to the terms of the contract. But due to severe flood the only mode of transportation available between their places is damaged which clearly makes the execution of delivery of 50 tons of sugar to Mr. Y impossible within the stipulated time. Now Mr. X claims compensation of ₹ 10,000 from Mr. Y for non-acceptance of delivery after expiry of the stipulated time - period but since the contract has already gone void due to impossibility of performance within the stipulated time - period there remains no legal room for demanding compensation. But at the same time the contention of Mr. Y for refund of his previously advanced sum of ₹ 50,000 stands valid as under the provisions of Indian Contract Act, 1872 if a contract turns void due to any specific reason then all previously advanced sums have to be refunded.

2019 - June [3] (c) Mr. Rich aspired to get a self- portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of Indian Contract Act 1872?

- (i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father ?
- (ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

(6 marks)

Answer:

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death/inability of the promisor. As regards any other contract the legal representatives of the promisor are bound to perform unless contrary intention appears from the contract.

A contract is discharged by impossibility of performance. Impossibility may be created due to several factors, one of which may be as a result of some personal in capacity like dangerous malady.

In the given case, the promisor (Mr. C) got paralyzed during the performance of contract, due to which further performance of the contract becomes impossible and the contract becomes void.

- (i) Mr. Rich, cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C as legal representative is not responsible to perform in case, of contracts involving personal skill.
- (ii) Mr. Rich cannot ask Mr. K to refund the amount as the contract becomes void and unenforceable due to impossibility of performance.

2019 - Nov [3] (c) Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹ 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹ 1,00,000 on 28.02.2019 and remaining ₹ 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjusted ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of data of borrowal of funds,

Now you decide:

- (i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- (iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

(6 marks)

Answer:

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

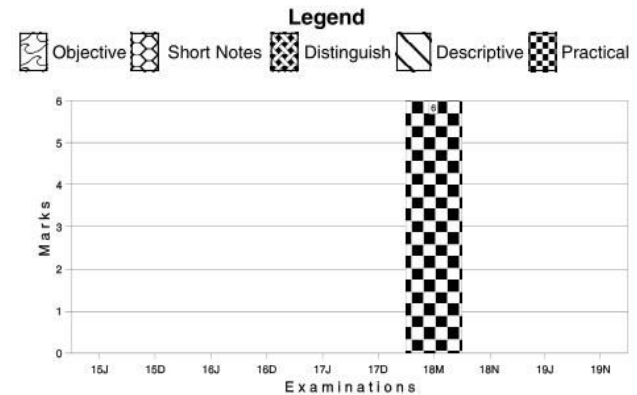
- (i) **Application of Payment where debt to be discharged is indicated:**
Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or that the payment is to be applied in discharge of some particular debt, the payment, if accepted, must be applied accordingly.
- (ii) **Application of Payment where debt to be discharged is not indicated:**
Where the debtor has omitted to intimate that payment is to be applied in discharge of which debt, then creditor may apply it at his discretion to any lawful debt actually due to him from the debtor (even where it is barred by law).
- (iii) **Application of Payment where neither party appropriates:**
Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether or not they are barred by limitation. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

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

- (i) Contention of Mr. Datamal is correct as per provisions of the Act, to indicate the debt to be adjusted.
- (ii) If the borrower does not insist on any order of adjustment of repayment, then lender at his discretion may adjust in any debt he wants.
- (iii) In case neither of them appropriates, then repayment will be adjusted to the debt first in time.

CHAPTER	The Indian Contract Act, 1872
1	
Unit: 5 Breach of Contract and its Remedies	

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



For detailed analysis Login at www.scannerclasses.com
for registration and password see first page of this book.

SELF STUDY QUESTIONS

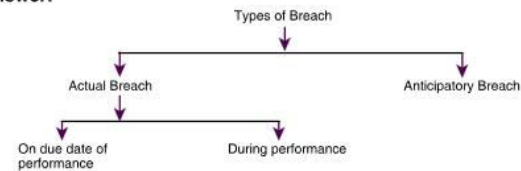
Q.1: What is Breach of Contract ?

Answer:

- Breach of contract means failure of a party to perform his obligations.
- **Consequences of Breach:**
 - (i) It discharges the aggrieved party from performing his obligations.
 - (ii) The aggrieved party is entitled to proceed against the party at fault.

Q.2: How Many Types of Breach of Contracts are there ?

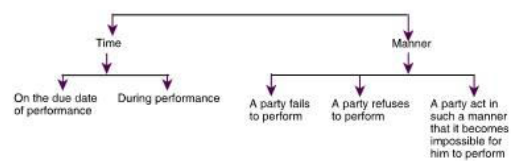
Answer:



Q.3: How Many Types of Actual Breach of Contracts are there ?

Answer:

Actual Breach of contract:



Q.4: Describe the Suit for Damages.

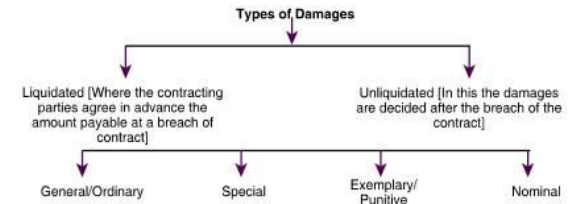
Answer:

Suit for damages:

- As per Section 73, when a contract is broken, the party at loss or damage from the breach is entitled to receive from the party at fault, compensation for the loss suffered by him.
- The loss or damage should have –
 - (a) arose naturally in the usual course of things from such breach or
 - (b) which the parties know to be the likely result of such breach.
- No compensation for any remote or indirect loss.

Q.5: What Kind of Damages may be Awarded in Case of Breach of Contract ?

Answer:



(i) General/Ordinary Damages:

- It helps putting the injured party in the position that he would have been if the contract was performed.
- It refers to the estimated amount of loss actually incurred.
- It applies only to proximate consequences of the breach of contract.

(ii) Special Damages:

- It includes those damages other than that arising directly from breach.
- It must be known to parties at the time of entering into contract.

(iii) **Exemplary/Punitive Damages:**

- These are awarded not to compensate the aggrieved party, but as a means of punishment to the defaulting party.
- It is awarded in 2 cases.
 - (a) Breach of contract to marry or promise to marry.
 - (b) Wrong dishonour of a customer's cheque by a banker.

(iv) **Nominal Damages:**

- These are awarded where the plaintiff has proved that there has been a breach of contract but he has not suffered any loss or damage.

(v) Damages for deterioration caused by delay

(vi) **Pre-fixed damages:**

- These damages are fixed at the time of formation of the contract.

Relevant Case Law:

Hadley V/s Barendale.

Facts:

- (i) X's mill was stopped due to break down of shaft.
- (ii) He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one.
- (iii) X did not inform Y that delay would result in loss of profits.
- (iv) Due to Y's neglect, delivery was delayed beyond a reasonable time.

Decision: Y was not liable for loss of profits during the delayed period.

Q.6: What do you understand by Penalty and Liquidated Damages ?

Answer:

- When parties to a contract, specify a certain sum in the contract which will become payable as a result of breach, such specified sum is known as liquidated damages or penalty.
- Under the English Law,
 - (a) If the amount fixed is a genuine pre-estimate of the loss in case of breach it is liquidated damages and is allowed.

- (b) If the amount is fixed without any regard to probable loss, but is only to frighten the party and prevent it from committing any breach, it is a penalty and not allowed.
- In Indian law, there is no difference between the two.
Relevant Case Law: Union of India V/s Raman Iron Foundry.

Q.7: When a Claim for Rescission of contract arises ?

Answer:

- It means right available to aggrieved party to terminate the contract. In this case, the aggrieved party is not required to perform his part of obligation and is entitled to claim compensation for any loss caused to him.

Q.8: When a Claim for specific performance of the contract arises ?

Answer:

- In certain cases, when the damages are not adequate remedy, the court may direct the party in breach for specific performance of the contract and the promise is carried out as per the terms of the contract.
- Usually granted in contracts connected with land.
- It cannot be granted where -
 - (a) Monetary compensation is an adequate relief.
 - (b) Contract is of personal nature.
 - (c) It is not possible for court to supervise performance of contract.
 - (d) Contract is ultra virus.
 - (e) One of the parties is a minor.

Q.9: When a Claim for Injunction arises ?

Answer:

- Injunction refers to an order passed by a competent court restraining a person from doing a particular act. Negative term of contract means doing something, which party has promised not to do or reasonable remuneration.
- Thus, where a party to a contract is negotiating the terms of a contract, the court may in its discretion issuing an order to the defendant restrain him from doing what he promised not to do.

SHORT PRACTICE QUESTIONS

1. What do you mean by anticipatory Breach of Contract? How does it differ from Actual Breach of contract?
2. What is damages explain in brief kinds of damages?
3. Differentiate between liquidated damages and penalty.
4. Write Short notes on:
 - (a) Quantum Merit
 - (b) Suit for specific performance
 - (c) Vindictive Damages
 - (d) Suit for injunction.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

2000 - May [1] State with reasons whether the following statement is True or False:

- (vi) Breach of condition gives rise to a right to repudiate the contract of sale. (2 marks)

Answer:

Correct: Breach of a condition gives the right to the aggrieved party to repudiate the contract. A condition is a stipulation essential to the main purpose of the contract.

SHORT NOTES

1994 - Nov [7] Write short note on the following:

- (b) Anticipatory Breach of a Contract. (5 marks)

Answer:

Anticipatory breach: When a party to a contract refuses to perform his part of the contract, before the due date of performance, It is known as anticipatory or constructive breach of contract. This may happen in the following two ways :

- (i) **By express renunciation:** Here a party to a contract expressly renounces his obligation under the contract, before the due date of performance. For example, A agrees to deliver a particular horse to B on 1st May. Before 1st May, (say on 20th April), A informs B that he shall not deliver the horse on 1stMay. This is an express repudiation of the contract.
- (ii) **Implied repudiation:** Here a party by his own act disables himself from performing the contract i.e. he acts in such a manner that it becomes impossible for him to perform his promise. In the example given above, if A sells that very horse to C on 20th April, he breaks the contract by his conduct.

Rights of the promisee: In case of anticipatory breach of contract, the promisee has the following rights :

- (i) He may treat the contract as repudiated and sue the other party for damages for the breach of contract without waiting until the due date of performance. In this case the promisee will be absolved from further performance of his promise.
- (ii) He may decide to wait till the due date of performance and then hold the defaulting party liable for consequences of the breach. If the promisee decides to wait till the due date of performance, the contract remains alive for the benefit of both the parties and he runs the following risks :
 1. The party who has previously expressed his intention not to perform the contract may change his mind and perform the contract on the due date of performance. The promisee will be bound to accept this performance.
 2. The party who has previously expressed his intention not to perform the contract may take the advantage of any supervening circumstances which would justify him in declining to complete it.

1996 - May [7] Write short note on the following:

- (c) Liquidated damages. (5 marks)

Answer:

Liquidated damages: Sometimes the parties to a contract, at the time of making the contract agree to the amount of compensation payable in the event of the breach of the contract. The amount of compensation payable, which has been agreed may be either liquidated damages or penalty. A liquidated damage is a fair and genuine covenanted pre-estimate of probable damage for an anticipated breach of contract. If it appears at the time of entering into a contract, the amount of damage likely to follow from a breach was uncertain and the parties, to avoid uncertainty and the expense of proving damages in a court, agreed at the particular amount, that sum would be described as liquidated damages.

Liquidated damages differ from penalty and the difference is maintained in English Law but in India the courts do not observe such distinction and it is left to the courts to decide. This will be evident from Section 74 of the Indian Contract Act, 1872.

1997 - May [7] Write short note on the following:

- (c) Quantum Meruit. (5 marks)

Answer:

Quantum Meruit: The phrase 'quantum meruit' literally means "as much as is earned" or according to the quantity of work done." When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not in default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise:

- (i) Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party (Section 65).
- (ii) Where, a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit (Section 70).
- (iii) The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

1998 - Nov [7] Write short note on the following:

- (c) Anticipatory breach of contract (5 marks)

Answer:

Anticipatory breach of contract: Section 39 of the Indian Contract Act, 1972 deals with what is known in English Law as anticipatory breach of contract. A breach of contract may take place before the time fixed after performance of the contract has arrived. Thus, if a promisor by his own act disables himself from performing his promise or refuses to perform his part of the contract, the other party is entitled to treat the contract as at an end and to sue him for damages for breach of contract without waiting until the time fixed for performance and without further performing his part of the contract. Where party to contract refuses to perform his part of the contract before the actual time arrives, the law gives the promisee an option whereby he may either-

- (a) elect to rescind and may then although the time for the performance has not yet received, treat the contract as at an end and at once sue for the damages, or

- (b) he may elect not to rescind but to treat the contracts still operative and wait for the time of performance and then hold the other party responsible for all the consequences of non-performance.

1999 - May [7] Write short note on the following:

- (a) Quantum Meruit (5 marks)

Answer:

Please Refer 1997 - May [7] (c) on page no. 154

2002 - May [7] Write short note on the following:

- (b) Vindictive and Nominal damages (5 marks)

Answer:

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Vindictive damages have no place in the law of contract because they are punitive by nature. But in case of (a) breach of a promise to marry, and (b) dishonour of a cheque by a banker wrongfully when he possesses sufficient funds to the credit of the customer, the court may award vindictive damages.

Whereas is nominal damages where the injured party has not in fact suffered any loss by reasons of the breach of a contract, the damages recoverable by him are nominal. These damages merely acknowledge that the plaintiff has proved his case and won.

2002 - Nov [2] Write short note on the following:

- (c) Remedies available to an aggrieved party on the breach of contract. (5 marks)

Answer:

Following are the remedies available to an aggrieved party on breach of contract.

- (i) Suit for damages.
(ii) **Recession of contract by the other party:** When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

- (iii) **Suit upon Quantum Meruit:** The phrase 'quantum meruit' literally means "as much as is, earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something, which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where further performance of the contract becomes impossible. The claim of quantum meruit must be brought by a party who is not in default.
- (iv) **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may be at its discretion on a suit for specific performance direct a party in breach, to carry out his promise according to the terms of the contract.
- (v) **Suit for injunction:** Where a party to a contract is negotiating the terms of a contract, the court may be issuing an 'injunction order' restrain him from doing what he promised not to do.

2002 - Nov [7] Write short note on the following:

- (c) Anticipatory breach of contract (5 marks)

Answer:

Please Refer 1998 - Nov [7] (c) on page no. 155

DISTINGUISH BETWEEN

1995 - May [4] (b) Distinguish between:

- (ii) 'Liquidated damages' and 'Penalty'. (5 marks)

Answer:

Liquidated damages and penalty: Liquidated damages and penalty are applicable to determine the extent of damages in case of breach of contract both in England and in India. Still there exist some difference between these two which are as follows:

2.158 ■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

- (i) Liquidated damages are the amount assessed on the basis of actual or probable loss by both the parties payable in the event of breach. While in case of penalty it is not based on actual or probable loss. Penalty is provided to prevent a party from committing a breach.
- (ii) Liquidated damage is imposed by way of compensation but penalty is imposed by way of punishment.
- (iii) Courts in England usually allow 'liquidated damages' without any regard to the actual loss sustained and treat penalty clause as invalid. But Section 74 of the Contract Act, 1872 in India does not recognise any difference between these two terms. Here the courts are required to allow reasonable compensation so as to cover the actual loss sustained, not exceeding the amount so mentioned in the contract.

1998 - Nov [6] (b) Distinguish between:

- (i) 'Liquidated damages' and 'Penalty'. (5 marks)

Answer:

Please Refer 1995 - May [4] (b) (ii) on page no. 157

2000 - Nov [4] (b) Distinguish between:

- (ii) 'Liquidated damages' and 'Penalty'. (5 marks)

Answer:

Please Refer 1995 - May [4] (b) (ii) on page no. 157

DESCRIPTIVE QUESTIONS

1996 - Nov [5] Comment the following:

- (b) What is an anticipatory Breach of Contract? (5 marks)

Answer:

Anticipatory breach of contract: An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in *Frost v. Knight and Hochster v. Dela Tour*.

[Chapter → 1 Unit : 5] Breach of Contract... ■ 2.159

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

When A contracts with B on 15th July, 1995 to supply 10 bales of cotton for a specified sum on 14th August, 1995 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 1995, there is an express rejection of the contract. Where A agrees to sell his white horse to B for ₹ 5,000/- on 10th August, 1995, but he sells this horse to C on 1st of August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform, or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:

1. To either treat the contract as rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance, or
2. He may elect 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. But in this case, 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.

1997 - Nov [6] Comment the following:

- (a) What kinds of damages may be awarded in case of breach of the contract under the law of contract? (10 marks)

Answer:

Damages: Remedy by way of damages is the most common remedy available to the injured party. This entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach. Sections 73 to 75 of the Contract Act incorporate the provisions in this regard. The damages which may be awarded to the injured party may be of the following kinds:

- (i) **Ordinary damages:** 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 to be given for any remote and indirect loss or damage sustained by reason of the breach. [Section 73 of the Contract Act and the rule in *Hadley vs. Baxendale (1854) 1 Ex. 341*].
- (ii) **Special damages:** Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.
- (iii) **Vindictive or exemplary damages:** These damages may be awarded only in two cases:
 - (a) for breach of promise to marry because it causes injury to his or her feelings; and
 - (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader can not get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. [*Gibbons vs. West Minister Bank (1939) 2 K.B. 882*].

- (iv) **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage and the injury is nominal.

1999 - May [2] Comment the following:

- (c) Remote and indirect losses are not recoverable. (5 marks)

Answer:

Section 73 of the Indian Contract Act, (1872 deals with the compensation for loss or damages caused by breach of contract: In this relation, the basic rule is that damages must not be too remote. The remote damages and indirect losses are those which are either far away in time or widely separated from usual course of things of contract. They are in the nature of distant indirect losses. They are not reasonably foreseeable by a normally reasonable man. The Supreme Court has ruled that remote or indirect loss or damages sustained by reason of the breach will not entitle the party to any compensation (*Karsands (v) Saran Engineering Co., AIR 1965 SC 1981*). Thus, the person who has committed the breach is liable for reasonably foreseeable losses, those that a normally prudent person would have had reason to foresee as probable consequences of future breach. A defaulting person is not liable for those damages which are not reasonably foreseeable. Thus remote damages are not recoverable. Non fulfilment of emotional expectations due to non-performance of a contract is a kind of remote damage being widely separated from the usual things of the contract.

1999 - Nov [2] Explain briefly of the following:

- (i) What remedies are available to an aggrieved party on the breach of contract? (5 marks)

Answer:

Remedies for breach of contracts: When a contract is broken, the injured party becomes entitled to any one or more of the following reliefs:

- (a) **Rescission of the contract:** with the result that the injured party is freed from all his obligations under the contract.
- (b) **Suit for damages:** Damages are monetary compensation awarded to the injured party by Court for loss or injury suffered by him. Section 73 of the Indian Contract Act, 1872 has laid down the rules as to how the

amount of compensation is to be determined. Damages may be nominal or ordinary or special or exemplary damages or damages for deterioration caused by delay.

- (c) **Suit upon Quantum Meruit:** A right to sue on a quantum meruit (as much as earned) arises when a contract performed by one party, has become discharged by the breach of contract by the other party. It is based on implied promise arising from acceptance of benefit by the party.
- (d) **Suit for specific performance contract:** Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct the party in breach, to carry out his promise according to the terms of the contract.
- (e) **Suit for an injunction:** Where a party to a contract is negotiating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

2000 - May [2] Comment the following:

- (ii) Damages are "Compensatory" and "Not Penal". (5 marks)

Answer:

Damages (ordinary or special) are given by way of compensation for loss suffered and not by way of punishment for wrong inflicted. The fundamental basis of awarding damages is compensation for pecuniary loss which naturally flows from the breach of contract. The object is to put the injured party in the same position, so far as money can do it, as if he had not been injured.

Hence, vindictive or exemplary or exemplary damages have no place in the law of contract because they are punitive by nature. But in case of breach of a promise to marry and dishonour of a cheque by a banker wrongfully even when sufficient funds are there to the credit of customers account, the court may award exemplary damages.

2000 - May [5] Comment the following:

- (iii) What is meant by Anticipatory Breach of a contract? (5 marks)

Answer:

Anticipatory breach of contract: An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in *Frost vs. Knight and Hochster vs. De La Tour*.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

Where A contracts with B on 15th July, 1999 to supply 10 bales of cotton for a specified sum on 14th August, 1999 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 1999, there is an express rejection of the contract.

Where A agrees to sell his white horse to B for ₹ 5,000/- on 10th August, 1995, but he sells this horse to C on 1st August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform, or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:

1. to either treat the contract as rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance, or
2. he may elect 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. But in this case, 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 re-consideration, 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.

2001 - Nov [5] Comment the following:

(b) When a claim for Quantum Meruit arises? (5 marks)

Answer:

A claim for quantum meruit shall arise under the following circumstances:

1. When the contract is discovered to be unenforceable (Section 65, Indian Contract Act, 1872) i.e. when the agreement is discovered to be void or becomes void, any person receiving benefit under such an agreement or contract is bound to restore it.
2. When one party abandons or refuses to perform the contract. Where there is a breach of contract, the aggrieved party is entitled to claim reasonable compensation for what he has done under the contract.
3. When a contract is divisible, and the party in default, has enjoyed the part performance, the party in default may sue on quantum meruit.
4. When an undivisible contract for lump sum is performed but badly, the person who has performed can claim the lump sum less deduction for bad workmanship.

PRACTICAL QUESTIONS

2018 - May [3] (c) M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 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 ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (6 marks)

Answer:

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 parties know, when they made the contract to be likely to result from the breach of it.

Such compensation is not to be given for any remote or indirect loss or damage sustained by reasons of the breach.

In the given case, Shanti Traders suffered a loss ₹ 1.25 lakhs (12.75 – 11.50) due to breach of contract by M Ltd. This naturally arose in the usual course of things. Shanti Traders also had to pay penalty to Zenith Trader for breach of contract, which should be considered as indirect loss or remote loss for which M Ltd. cannot be held responsible.

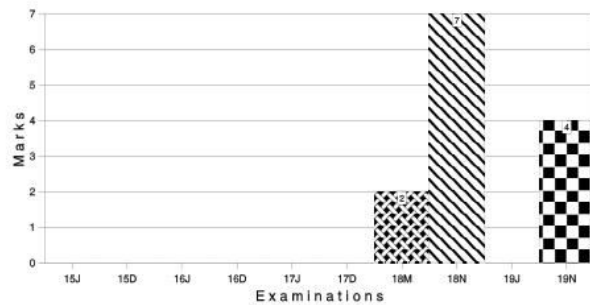
Therefore, Shanti Traders can claim an amount of ₹ 1.25 lakh from M Ltd. and nothing beyond.

CHAPTER	The Indian Contract Act, 1872
1	
Unit: 6	Contingent and Quasi Contracts

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

Objective Short Notes Distinguish Descriptive Practical



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: Described the Rules Relating to Enforcement Under the Indian Contract Act, 1872.

Answer:

Sr. No.	Rules	Enforcement
1.	Happening of future uncertain event	Cannot be enforced by law unless and until that event happens. Contract becomes void if event becomes impossible.
2.	Non-happening of an uncertain future event	Can be enforced when the happening of that event becomes impossible and not before.
3.	Behaviour of a person at an unspecified time in future	Event is considered impossible when that person does anything' which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.
4.	Happening of a specified uncertain event within a fixed time	Becomes void if: (a) at the expiration of the time, such event has not happen, or (b) before the time fixed, such event becomes impossible.
5.	Non-happening of a specified uncertain event within a fixed time	Can be enforced by law: (a) When the time fixed has expired and such event has not happened, or (b) Before the time fixed has expired, it becomes certain that such event will not happen.

6.	Impossible Event	Are void, whether the impossibility of the event is known or not known to the parties at the time of making the agreement.
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Q.2: State Briefly the Law Relating to Quasi Contracts.

Answer:

Quasi Contracts

- A obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. They are known as quasi contracts.
- They are based on principles of equity, justice and good conscience.
- They are termed as certain relations resembling those created by contracts.
- It is also known as Law of Restitution.
- **It has following features:**
 - (i) It does not arise from any agreement between the parties but is imposed by law.
 - (ii) It is a right only available against a particular person or persons and not against the entire world.
- **They are of following types:**
 - (i) Supply of necessities
 - (ii) Reimbursement of money due
 - (iii) Obligation to pay for benefit out of non-gratuitous act
 - (iv) Responsibility of finder of goods
 - (v) Persons receiving goods or money by mistake
 - (vi) Quantum merit (as much as earned or reasonable remuneration)

Supply of necessities (Section 68)

- "If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person".

- If necessities are supplied to a minor or person of unsound mind, the supplier is entitled to claim their price from the property of such a person.
- If there is no property, nothing will be realizable.

Reimbursement of money due (Section 69)

- "A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other."
- A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been by him protect this own interest.
- Payment must be bonafide.

Obligation to pay for benefit out of non-gratuitous act (Section 70)

- "Where a person lawfully does something for another person or delivers anything to him, not intending to do so gratuitously and the other person accepts and enjoy the benefits thereof, then he is bound to make compensation to the other in respect of or to rectory the thing so done or delivered".

Q.3: Explain the Liabilities of Person receiving goods or money by mistake.

Answer:

Person receiving goods or money by mistake

- "A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it"
- Mistake, need not be unintentional, it may be even intentional.

SHORT PRACTICE QUESTIONS

1. Write Short note on Contingent Contract.
2. Define Quasi Contracts.
3. Differentiate between Wagering Agreement and Contingent Contract.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - May [1] State with reason whether the following statement is true or false:

- (ii) A contract of indemnity is not a contingent contract. (2 marks)

Answer:

Incorrect: A contract of indemnity is a class of contingent contracts. Because in such a contract, the performance depends upon the happening or non-happening of certain event i.e. occurrence of loss caused by the conduct of the promisor or any other person.

1995 - Nov [1] State with reason whether the following statement is true or false:

- (ii) A stranger to the consideration can enforce the contract. (2 marks)

Answer:

Correct: Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This rule applies in the cases of marriage settlement, partition or other family arrangements, trust, agency, assignment, etc.

1996 - Nov [1] State with reason whether the following statement is true or false:

- (iv) Insurance contracts are covered under contracts of indemnity. (2 marks)

Answer:

Correct: According to Section 124 contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. In the insurance contract if insured suffers any loss, the same is made good by the insurer i.e. the insurance companies. Such contracts are covered under the above definition. However, a life insurance is a contingent contract and not a contract of indemnity.

1997 - Nov [1] State with reason whether the following statement is true or false:

- (iii) In Quasi contracts, the promise to pay is always an implication of law and not of facts. (2 marks)

Answer:

Correct: Though quasi-contracts are not contracts in the strict sense (as there is no offer, acceptance, consensus-ad-idem etc), yet the law from the circumstances of the case, conduct and relationship of parties, implies by fiction an obligation on the one party and confirming a right to a money payment in favour of the other.

2002 - May [1] State with reason whether the following statement is true or false:

- (v) A 'Contract of indemnity' is not a 'Contingent contract'. (2 marks)

Answer:

Incorrect: Indemnity is an act to compensate or protect somebody against loss or to make good the loss suffered (Section 124 of Indian Contract Act, 1872). The contingency upon such the whole contract of indemnity depends upon the event of suffering loss by the other party. Thus, a contract of indemnity is a type of contingent contract.

SHORT NOTES

1995 - Nov [7] Write short notes on the following:

- (a) Contingent Contract. (5 marks)

Answer:

Contingent Contract:

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen (Section 31 of the Indian Contract Act). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay B ₹ 10,000 if B's house to burnt. This is a contingent contract. The following characteristics of contingent contracts can be printed out:

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1. The performance of a contingent contract depends upon the happening or non-happening of some uncertain future event.
2. Contingent contracts may be subject to a condition precedent or subsequent.
3. The event on which the performance is made to depend upon is an event collateral to the contract. The event should neither be a performance promised, nor the consideration for the promise.
4. The contingent event should not be the mere will of the promisor.
5. The happening of the event is uncertain.

Rules:

Section 32: Contingent contract cannot be enforced until the relevant event has happened.

Section 33: It can be enforced on non-happening of such event, if it becomes impossible.

Section 34: The event is considered impossible when a person does some act so as to make it impossible.

Section 35: If time fixed for an event to occur expires, it becomes impossible.

Section 36: Contingent agreement based on happening of impossible events are void.

DISTINGUISH BETWEEN

1998 - May [6] (b) Distinguish Between of the following:

- (i) Wagering agreement and Contingent contract. (5 marks)

Answer:

Wagering agreement and Contingent contract: Agreement by way of wager are void, according to Section 30. In a wagering agreement, two parties have opposite views regarding an uncertain event, and they stipulate that upon the determination of the event in a certain way the parties shall win or lose from each other, a certain sum of money and the parties have no other interest in the event except winning or loosing a bet.

[Chapter → 1 Unit : 6] Contingent and Quasi Contracts ■ 2.173

According to Section 31 of the Indian Contract Act, 1872 a contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen. Contracts of Indemnity or of insurance are of this type. But however, there is difference between the wagering agreements and contingent contract which may be enumerated as follows:

- (i) A wagering agreement consists of reciprocal promises whereas a contingent, contract may not contain reciprocal promises.
- (ii) In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
- (iii) A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
- (iv) A wagering agreement is void whereas a contingent contract is valid.
- (v) In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.

2018 - May [2] (c) (i) Distinguish between wagering agreement and contract of insurance. (2 marks)

Answer:

Difference between a Contingent Contract/Contract of Insurance and a Wagering Contract:

Contract of Insurance:

S. No.	Contingent Contracts	Wagering Contracts
1.	It is a contract to do or not to do something if an event collateral to main contract happens or does not happen.	It is a promise to give money or money's worth on an uncertain event happening or not happening.
2.	It may not be wagering in nature.	It is essentially contingent in nature.
3.	It is valid.	It is void.
4.	It may not contain reciprocal promises.	It does consists of reciprocal promise.

DESCRIPTIVE QUESTIONS

1994 - Nov [3] (a) Explain the term 'Quasi Contracts' and state their characteristics. Illustrate your answer by giving examples. (10 marks)

Answer:

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

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

Section 68 to 72 of [the Indian Contract Act deals with the following types of quasi-contracts]:

1. **Claim for necessities supplied to a person incapable of contracting (Sec. 68).** If a person incapable of entering into a contract or anyone whom he is legally bound to support, is supplied with necessities suited to his condition in life by another person the supplier is entitled to recover the price from the property of the incapable person.

Example: (a) A supplies B, a lunatic, or a minor, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. **Reimbursement of person paying money due by another, in payment of which he is interested.** 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 (Sec. 69).
Example: B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A 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 the annulment of B's lease. B, to prevent sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.
3. **Obligation of person enjoying benefit of non-gratuitous act.** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered (Sec. 70).
Example: A, a tradesman, leaves goods at B's house by mistake, B treats the goods as his own. He is bound to pay A for them.
4. **Responsibility of finder of goods.** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee (Sect. 71).
5. **Liability of persons to whom money is paid, or thing delivered by mistake or under coercion.** A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it (Sec. 72).
Example: A and B jointly owe 100 rupees to C. A alone pays the amount to C and B, not knowing this fact, pays 100 rupees over gain to C. C is bound to repay the amount to B.
6. **Quantum meruit.** In addition to the above types of quasi contracts expressly provided in the Act, a claim can also be made on the basis of quantum meruit. Where a person has rendered some service to another under the circumstances which indicate that it is to be paid for though no remuneration was fixed, the law implies a promise to pay for the amount of the work actually done. It means payment in proportion to the amount of work done.

1996 - May [2] Comment on the following:
(c) A contract of indemnity is a contingent contract. (5 marks)

Answer:

A contract of indemnity is a contingent contract: The statement is correct in the sense that a contract of indemnity is one by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person. A contingent contract is a contract to do or not to do something if some event collateral to such contract does or does not happen. From the above definitions, it can be seen that both contracts are conditional contracts. Their performance depends upon some contingency which is uncertain. A contract of indemnity is really a part of the general class of contingent contracts. It is entered into with the object of protecting the promisee against any anticipated loss. The contingency upon which the whole contract of indemnity depends is the happening of loss.

1996 - Nov [3] (a) State briefly the law relating to 'Quasi contract'.
(10 marks)

Answer:

Quasi contracts: Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as "Quasi-Contracts". A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Sections 68 to 72 of the Indian Contract Act has prescribed the following relationships creating quasi-contractual relations:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that 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.
3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the thing so done or deliver.
4. **Responsibility of finder of goods:** Under Section 7 of the Act, a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it. Thus, quasi contractual right is always a right to money and generally though not always to a liquidated sum of money. It does not arise from any agreement of the parties concerned, but is imposed by the law. It is a right which is not available against all the world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

1997 - May [6] (a) Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. (10 marks)

Answer:

Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happen" (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay

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B ₹ 10,000, if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

- (i) There must be a contract to do or not to do something.
- (ii) The performance of the contract must depend upon the happening or non-happening of some event.
- (iii) The happening of the event is uncertain.
- (iv) The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.
- (v) The contingent event should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

The rules regarding the contingent contract are as follows:

- (1) Contingent contract dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void. (Section 32).
- (2) Where a contingent contract is to be performed if a particular event does not happen, its performance can be enforced only when happening of that event becomes impossible. (Section 33).
- (3) If a contract is contingent upon, how a person will act at an unspecified time the event shall be considered to become impossible, when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34, 35).
- (4) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties. (Section 36)

1999 - May [3] (a) What is meant by Quasi-contract? Explain the types of Quasi-contracts which have been described in the Indian Contract Act, 1872.

(10 marks)

Answer:

Please refer 1996 - Nov [3] (a) on page no. 176

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1999 - Nov [2] Explain briefly the following:

- (iii) The duties and liabilities of a finder of goods are treated at par with bailee. (5 marks)

Answer:

Duties and Liabilities of finder of goods: The duties and liabilities of a finder of goods are treated at par with bailee. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. (Section 71 of the Indian Contract Act, 1872). He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk quality and value. He must also take all necessary measures to trace its true owner. If he does not take, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in the goods will vest in the finder and he can retain the goods as his own against the whole world except the real owner. He can sell the goods in the following cases:

- (a) where the owner cannot with reasonable diligence be found; or
- (b) when found, he refuses to pay the lawful charges of the finder; or
- (c) if the thing is in danger of perishing or losing greater part of its value.
- (d) if the lawful charges amount to 2/3 of the value of the thing.

2001 - May [5] Briefly answer of the following:

- (a) What is a contingent contract and what are its essentials? (5 marks)

Answer:

Please refer 1997 - May [6] (a) on page no. 177

2002 - May [5] (c) Briefly answer the following:

What are the salient features of a quasi contract? (5 marks)

Answer:

Please refer 1996 - Nov [3] (a) on page no. 176

2018 - Nov [2] (a) What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. (7 marks)

Answer:

A Contingent Contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. Contracts of insurance, indemnity and guarantee fall under this category.

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The essential constituents of a contingent contract are :

- (a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.

Example :

A promises to pay ₹ 50,000 to B if it rains on first of the next month.

- (b) The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
- (c) The contingent event should not be a mere will of the promisor. The event should be contingent in addition to being the will of the promisor.
- (d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is not a contingent contract.

PRACTICAL QUESTIONS

2019 - Nov [1] {C} (a) 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.

In the light of the Indian Contract Act, 1872, can X recover it from the Manager?
(4 marks)

Answer:

The finder of goods has no right to sue the owner for compensation for trouble and Expense Voluntarily incurred by him to presume the goods and to find the true owner, but he may retain the goods against the owner until he receives such compensation, until then the finder may retain the goods with him.

[Chapter → 1 Unit : 6] Contingent and Quasi Contracts ■ **2.181**

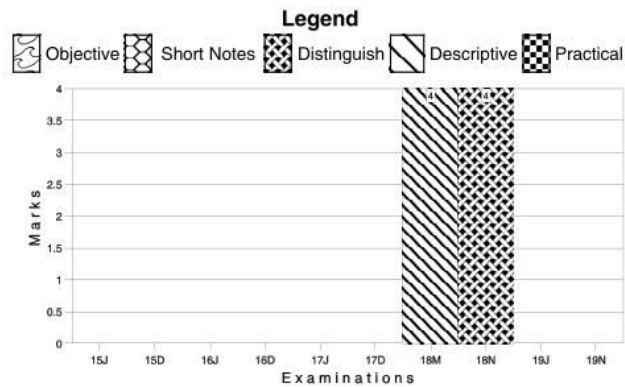
In the given case X finds a wallet in a restaurant and hands it over to the manager as the true owner could not be traced. After a week a demands the wallet back from the manager, which he refuses to give, saying it did not belong to X.

Held, the manager must return the wallet to 'X' as he being the finder of lost goods was entitled to retain the goods found against everybody except the true owner.

Thus, 'X' can recover the wallet from the manager.

CHAPTER	
2	The Sale of Goods Act, 1930
Unit: 1	Formation of the contract of sale

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



For detailed analysis Login at www.scannerclasses.com
for registration and password see first page of this book.

2.182

[Chapter ⇒ 2 Unit : 1] Formation of the contract..... ■ 2.183

SALE OF GOODS ACT, 1930

- Section 1** : Short title, extent and commencement.
Section 2 : Definitions.
Section 3 : Application of provisions of Act 9 of 1872.
Section 4 : Sale and agreement to sell.
Section 5 : Contract of Sale.
Section 6 : Existing or future goods.
Section 7 : Goods perishing before making of contract.
Section 8 : Goods perishing before sale but after agreement to sell.
Section 9 : Ascertainment of price.
Section 10 : Agreement to sell at valuation.
Section 11 : Stipulations as to time.
Section 12 : Condition and warranty.
Section 13 : When condition to be treated as warranty.
Section 14 : Implied undertaking as to title, etc.
Section 15 : Sale by description.
Section 16 : Implied condition as to quality.
Section 17 : Sale by Sample.
Section 18 : Goods must be ascertained.
Section 19 : Property passes when intended to pass.
Section 20 : Specific goods in a deliverable state.
Section 21 : Specific goods to be put into a deliverable state.
Section 22 : Specific goods in a deliverable state, when the seller has to do anything.
Section 23 : Sale of unascertained goods and appropriation.
Section 24 : Goods sent on approval.
Section 25 : Reservation of right of disposal.
Section 26 : Risk *prima facie* passes with property.
Section 27 : Sale by person not the owner.
Section 28 : Sale by joint owners.
Section 29 : Sale by person in possession under voidable contract.

- Section 30** : Seller or buyer in possession after sale.
Section 31 : Duties of Seller and Buyer.
Section 32 : Payment and Delivery.
Section 33 : Delivery.
Section 34 : Effect of part delivery.
Section 35 : Buyer to apply for delivery.
Section 36 : Rules as to delivery.
Section 37 : Delivery of wrong quantity.
Section 38 : Instalments deliveries.
Section 39 : Delivery to carrier.
Section 40 : Risk where goods are delivered at distant place.
Section 41 : Buyer's right of examining the goods.
Section 42 : Acceptance.
Section 43 : Buyer not bound to return rejected goods.
Section 44 : Liability of buyer for neglect or reflexing delivery of goods.
Section 45 : Unpaid seller.
Section 46 : Unpaid seller's rights.
Section 47 : Seller's lien.
Section 48 : Part delivery.
Section 49 : Termination of lien.
Section 50 : Right of stoppage in transit.
Section 51 : Duration of transit.
Section 52 : How stoppage in transit is effected.
Section 53 : Effect of subsale.
Section 54 : Sale not generally rescinded.
Section 55 : Suit for price.
Section 56 : Damages for non acceptance.
Section 57 : Damages for non delivery.
Section 58 : Specific performance.
Section 59 : Remedy for breach of warrant.
Section 60 : Repudiation of contract.
Section 61 : Interest by way of damages.

- Section 62** : Exchange of implied terms.
Section 63 : Reasonable time.
Section 64 : Auction sale.
Section 65 : Repeal.
Section 66 : Savings.

SELF STUDY QUESTIONS

Q.1: Describe the Introduction of Sales of Goods.

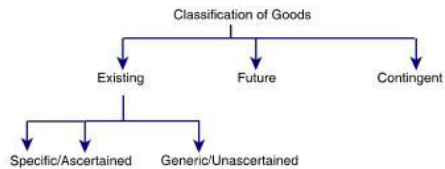
Answer:

- It is one of the special types of contract.
- Initially, it was the part of Indian Contract Act, 1872.
- Later it was deleted and a separate Sale of Goods Act was passed in 1930.
- Basic provisions and requirements of contract equally apply to Sales of Goods Act.
- It contains and deals with law relating to sale of goods and not with mortgage or pledge.
- It received its assent on 15th March, 1930 and came force into 1st July, 1930.
- It extends to whole of India except the state of Jammu and Kashmir.

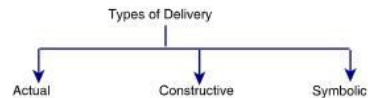
Q.2: What is the Definitions?

Answer:

- **Buyer:** person who buys or agrees to buy the goods.
 - **Seller:** person who sells or agrees to sell the goods.
 - **Goods:** As per section 2(7), it means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
- Money means current money and it includes rate and old coins.
 Actionable claims means what a person cannot make a present use of or enjoy, but can recover it by means of a suit or an action.



- **Existing Goods:** It means such goods which are in existence at the time of the contract of sale i.e. owned or possessed by the seller.
- **Specific Goods:** It means goods identified and agreed upon at the time the contract of sale has been made.
- **Ascertained Goods:** It means that the goods are identified in accordance with agreement after the contract of sale has been made.
- **Generic/ Unascertained Goods:** It means the goods which are not specifically identified but are indicated by description.
- **Future Goods:** As per section 2(6), it means goods to be manufactured or produced or acquired by the seller after making the contract of sale.
- **Contingent Goods:** It means the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.
- Agreement to sell can only be there in respect of future or contingent goods.
- Actual sale can take place only in respect of specific goods.
- Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under contract, be bound to take delivery of them.
- **Delivery:** It means voluntary transfer of possession by one person to another.



- **Document of title of Goods:** It includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate or any other document used in the ordinary course of business as proof of the possession or control of the goods or authoring or purporting to authorise either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented.
- **Property:** It means the general property and not merely a special property.
- **Insolvent:** person is said to be insolvent when he ceases to pay his debts in the ordinary course of business.
- **Mercantile Agent:** Is the agent having in the customary course of business as such agent authority either to sell or consign goods, etc.
- **Price:** Is the money consideration received for sale of goods.
- **Quality of Goods:** It includes their state or condition.

Q.3: Describe the Sale and Agreement to Sell.

Answer:

- As per section 4(3) of the Act, "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale."
- As per section 4(3) of the Act "where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell."

Q.4: Distinction between Sale and an Agreement to Sell.

Answer:

Sale	Agreement to sell
1. It is an executed contract.	It is an executory contract.
2. property in goods are transferred from seller to buyer when the contract is made.	Transfer of property in goods takes place at some future date.

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3. Seller cannot resell the goods as the property is with the buyer.	Seller can further resell the goods as the property in goods remains with him.
4. Risk passes to the buyer, as he becomes the owner.	Risk is with the seller as he remains the owner.
5. Performance in absolute without any condition.	Performance in conditional and is made in future.
6. Breach on part of buyer, seller can sue for the price and damages both.	Breach on part of seller, seller can sue for damages only and not for the price.
7. Breach on part of seller, buyer can compel him to deliver the goods or pay the damages.	Breach on part of seller, buyer can sue for damages only and cannot compel him to deliver the goods.
8. Gives the buyer 'Just-in-Rem' i.e. right against the whole world.	Gives the buyer, 'Just-in-Personam' i.e. right against a particular person.
9. Sale is contract plus conveyance.	It is pure and simple agreement.
10. In this, if goods are destroyed then loss will be of buyer.	In this, if goods are destroyed by accident, loss will fall on seller.

Q.5: Define the distinguished from other similar contracts:

Answer:

(i) Sale and Hire Purchase Agreement:

Sale	Hire Purchase Agreement
1. Property in goods is transferred to the buyer immediately at the time of contract.	The goods passes to the hirer upon payment of the last installment.
2. Position of buyer is that of owner of goods.	Position of hirer is that of bailee till he pays the last installment.

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3. Buyer cannot terminate the contract and is bound to pay the price of the goods.	Hirer may terminate the contract by returning the goods to owner without any liability to pay the remaining installments.
4. Seller takes the risk of any loss resulting from the buyer's insolvency.	Owner takes no such risk for, if hirer fails to pay the installment, he has the right to take back the goods.
5. Buyer can pass the goods title to a bonafide purchaser from him.	Hirer cannot pass any title even to a bonafide purchaser.
6. Tax is levied at the time of contract.	Tax is not leviable until it eventually turns into sale.

(ii) Sale and Bailment:

Sale	Bailment
1. Property in goods is transferred from seller to buyer.	There is only transfer of possession of goods from bailor to bailee.
2. Return of Goods is not possible.	Bailee must return the goods to bailor on accomplishment of the purpose of bailment.
3. Consideration is the price in terms of money.	Consideration may be gratuitous or non-gratuitous.
4. Buyer may use the goods in anyway he likes.	Bailee can use the goods only according to bailor's direction.
5. Any profit accrued in goods sold is the buyer's property.	Any profit accrued on goods bailed is the bailor's property. This applies only if goods are Existing goods.

(iii) Sale and contract for work and labour:

Sale	Contract for work and labour
1. Property in the goods is transferred from the seller to the buyer.	It is a contract for performing some work and not for transferring the property in goods.
2. It involves the delivery of goods.	It involves exercise of skill and labour in rendering some work. It involves, "the uses by means of money consideration".

Q.6: What are Contract of sale how made?

Answer:

- There may be immediate delivery of goods.
- There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date.
- There may be immediate delivery of the goods and an immediate payment of price.
- It may be agreed that the delivery or payment or both are to be made in installments.
- It may be agreed that the delivery or payment or both are to be made at some future date.

Q.7: Define the Subject matter of Contract of sale.

Answer:

As per section 6:

- Subject matter must always be goods which may be existing or future goods.
- Contract can also be made with regard to the goods, the acquisition of which by seller depends upon a contingency, which may or may not happen. Such contracts are contingent contracts.
- When the seller purports by his contract to effect a sale of future goods, the contract will operate only as an agreement to sell the goods and not as sale.

Goods perishing before making a contract (section 7):

- The contract is *void ab initio*.
- If seller enters into the contract even on being aware of the destruction, he is estoppel from disputing the contract.
- It also includes the goods that have lost their commercial value.
- Mutual mistake of fact essential to the contract renders the contract void.

Goods Perishing after Agreement to sell (Section 8) without any of the party's default:

- Agreement becomes void.
- Provided the risk has not passed to the buyer.
- It applies only to sale of specific goods.
- For uncertain goods sale, the perishing of the whole quantity of such goods in the possession of seller won't relieve him of his obligation to deliver.

Q.8: Describe the Ascertainment of price.

Answer:

- **Price:** It means a monetary consideration for the sale fo goods.
- It may be money actually paid or promised to be paid.
- No sale can take place without a price.
- Only money transactions are valid, no dealing in kind.

As per Section 9:

- Price may be
 - (i) Fixed by a contract,
 - (ii) Agreed to be fixed in a manner provided by the contract, or
 - (iii) Determined by the course of dealings between the parties.
- When it cannot be fixed in any of above ways, the buyer is bound to pay a reasonable price to the seller.
- Generally market price would be reasonable price.

As per Section 10:

- Price is to be determined by third party
- Where there is an agreement to sell goods on the terms that the price is to be fixed by third party, and he either does not or cannot make such valuation, the agreement will be void.

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- If the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

SHORT PRACTICE QUESTIONS

1. What are contingent goods?
2. Explain document of title.
3. Differentiate between
 - (a) Sale and Agreement of sale.
 - (b) Sale and Bailment.
4. How is price ascertained in a contract of sale?

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - Nov [1] State with reasons whether the following statements are Correct or Incorrect:

- (ix) The rights and liabilities arising in a contract of sale may be varied or avoided by binding usage. (2 marks)
- (x) Actionable claim is a subject-matter of contract of sale. (2 marks)

Answer:

- (ix) **Correct:** Section 62 of the Sale of Goods Act 1930, provides that right, duty, or liability arising under a contract of sale by implication of law may be negated or avoided or varied by usage if it binds both the parties.
- (x) **Incorrect:** Section 2(7) of the Sale of Goods Act, 1930 providing definition of 'goods' clearly excludes 'actionable claim'. Hence, actionable claim is not a subject matter of the contract of sale.

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1999 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (ix) Exchange of goods for goods between the two parties amounts to sale under the Sale of Goods Act, 1930. (2 marks)

Answer:

Incorrect: When goods are exchanged for goods, it is not a sale but a barter (Shelton (v) Cox). In sale there must be consideration in the form of money, called the price.

1999 - Nov [1] State with reasons whether the following statements are Correct or Incorrect:

- (v) A bailment is the delivery of goods by one person to another for some purpose. (2 marks)
- (viii) 'Goods' means every kind of movable property other than actionable claim and money. (2 marks)

Answer:

- (v) **Correct:** The first important characteristic of bailment is that the goods must be handed over to the bailee for whatever is the purpose of bailment. Once this is done, bailment arises, irrespective of the manner in which this happens. Delivery of possession differs from a mere custody. However, there is another important requirement for bailment is that the goods must be returned or otherwise disposed of according to the direction of the person delivering them.
- (viii) **Correct:** Goods means every kind of movable property i.e. property of every description [except immovable property, other than actionable claims and money. Section 2(7) of the Sale of Goods Act, 1930]. According to this definition, money and actionable claims are not goods and cannot be bought or sold.

2001 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) Contract of Sale can also take place by the conduct of the parties to the contract. (2 marks)

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Answer:

Correct: Subject to the provisions, of any law for the time being in force, a contract of sale may be expressed or may be implied from the conduct of the parties (Section 5(2) of the Indian Contract Act, 1872).

2002 - May [1] State with reasons whether the following statement is Correct or Incorrect:

(viii) 'Goods' means every kind of property other than actionable claims and money. (2 marks)

Answer:

Incorrect: Sub-section (7) of Section 2 of the Sale of Goods Act, 1930 defines the term 'goods' as "every kind of movable property" other than actionable claims and money. The term property includes both movable and immovable properties. Thus, the subject matter of sale under the said Act is "movable property" only excluding actionable claims and money.

2002 - Nov [1] State with reasons in brief whether the following is Correct or Incorrect.

(vii) In an agreement to sell, the property in the goods passes to the buyer immediately. (2 marks)

Answer:

Incorrect: According to Section 4(3) of the Sale of Goods Act 1930, in an agreement to sell, property in the goods is to be transferred to the buyer at some future date, or subject to the fulfillment of some conditions.

SHORT NOTES

1996 - May [7] Write short note on:

(d) Contract of sale. (5 marks)

Answer:

Contract of Sale: It is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price [Section 4(1), Sales of Goods Act, 1930].

[Chapter ⇒ 2 Unit : 1] Formation of the contract..... ■ 2.195

The following elements must co-exist to constitute a contract of sale:

1. There must be atleast two parties.
2. The subject matter must necessarily be 'goods'.
3. A price in money (not in kind) should be paid or promised.
4. A transfer of property must take place.
5. The sale may be absolute or conditional.
6. Other essential elements of a valid contract must be present.
Also, the contract of sale includes both 'Sale' as well as 'agreement to sell'.

1998 - May [7] Write short note on:

(d) Formalities of a contract of sale. (5 marks)

Answer:

Formalities of contract of Sale: Except where specifically required by any law, no particular form is necessary to constitute a valid contract. The agreement may be express or may be implied from the conduct of the parties. Section 5 of the Sale of Goods Act, 1930 lays down the rule as to how a contract of sale may be made and has nothing to do with the transfer or passing of the property in the goods.

A contract of sale may be made in any of the following modes:

1. There may be immediate delivery of the goods; or
2. There may be immediate payment of price, but it may be agreed that the delivery is to be made at same future date; or
3. There may be immediate delivery of the goods and an immediate payment of price; or
4. It may be agreed that the delivery or payment or both are to be made in instalments; or
5. It may be agreed that the delivery or payment or both are to be made at same future date.

1998 - Nov [7] Write short note on:

(e) Essentials of appropriation of goods. (5 marks)

Answer:

Essentials of Appropriation of goods: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) The goods should conform to the description and quality stated in the contract.
- (b) The goods must be in a deliverable state.
- (c) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (d) The appropriation must be made by:
 - (i) the seller with the assent of the buyer, or
 - (ii) the buyer with the assent of the seller.
- (e) The assents may be express or implied.
- (f) The assent may be given either before or after appropriation.

2001 - May [7] Write short note on:

- (e) 'Goods' in a Contract of Sale. (5 marks)

Answer:

"Goods" in a Contract of Sale: In the Sales of Goods Act, 1930, 'Goods', means every kind of movable property, i.e. property of every description (except immovable property), actionable claims and money and includes stocks, shares, growing crops, grass and things attached to or forming part of the land e.g. growing trees, machinery fixed or embedded in earth), which were agreed to be severed before sale or under the contract of sale. [Section 2(7)].

Goods can be of the following types:

1. Existing i.e. which are in existence at the time of sale.
2. Future goods i.e. which are in the process of manufacturing or production or acquisition by the seller after the contract of sale.
3. Specific i.e. which have been identified at the time of sale.

2002 - Nov [2] Write short note on:

- (e) Classification of goods in a contract of sale. (5 marks)

Answer:

Goods forming subject matter of the contract of sale may be classified as under:

- (i) Existing Goods
 - (a) Specific goods
 - (b) Unascertained goods
 - (c) Ascertained goods.
- (ii) Future Goods
- (iii) Contingent Goods

Existing Goods are those which are in actual existence at the time of contract of sale. The seller is the owner of goods or he has the possession of such goods.

Existing goods may be of the following three types:

- (i) **Specific Goods:** Goods which have either been identified and agreed by the parties at the time of contract of sale.
- (ii) **Ascertained Goods** are those identified only after the formation of a contract of sale. When unascertained goods are identified and agreed upon by the parties, the goods are called Ascertained goods.
- (iii) **Unascertained Goods** are those not specifically identified at the time of contract of sale. They are described by the description or sample only.
- (iv) **Future Goods** are those which are not in existence at the time of contract. These goods are to be acquired or produced by the seller after the contract of sale is made. It is an agreement to sell and not sale.
- (v) **Contingent goods** are like future goods. The acquisition of the goods by the seller depends upon the uncertain contingencies which may or may not happen e.g. goods will be supplied if ship arrives.

DISTINGUISH BETWEEN

1995 - May [4] (b) (i) Distinguish between A 'Sale' and a contract of 'Bailment'. (5 marks)

Answer:

Sale and Bailment: A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned to the bailor or are to be disposed of according to the directions of the bailor whereas, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

The difference between bailment and sale may be clearly understood by studying the following:

- (a) In a sale the property in goods is transferred from the seller to the buyer. But in bailment, there is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
- (b) In bailment, the bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made. But there is no question of return of goods in a contract of sale.
- (c) In a sale the consideration is the price in terms of money where as the bailment may be gratuitous or non-gratuitous.

1995 - Nov [6] (b) (ii) Distinguish between Sale and Hire-purchase Agreements. (5 marks)

Answer:

Sale and Hire Purchase Agreements:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another. [Section 4(1) Sale of Goods Act]. A contract of sale may be absolute or conditional. [Section 4(2)].

A hire purchase agreement is a contract whereby the owner of the goods lets them on hire to another person called hirer on payment of rent to be paid in instalments and upon an agreement that when a certain number of such instalments is paid, the ownership in goods will pass on to the hirer. The hirer may return the goods at any time without any obligation to pay the balance rent. It is not a contract of sale but only a bailment and the property in the goods remains in the owner during the continuance of the bailment.

1997 - May [4] (b) (i) Distinguish between Existing goods and Contingents goods. (5 marks)

Answer:

Existing Goods and Contingent Goods:

The two terms can be distinguished on the following basis:

1. **Meaning:** Goods which are physically in existence and which are in seller's ownership or possession at the time of entering of contract of sale are called existing goods. While goods, the acquisition of which by seller depends upon an uncertain contingency are called contingent goods. They are a type of future goods. Future goods are the goods to be manufactured, produced or acquired after the making of contract.
2. **Type:** A contract for the sale of contingent goods is always an agreement to sell while existing goods can be subject matter of sale as well as agreement of sell.
3. **Classification:** Existing goods may be classified as specific, ascertained or unascertained goods while there cannot be any such classification of contingent goods.

1997 - Nov [4] (b) (ii) Difference between Sale and Hire-purchase. (5 marks)

Answer:

Please refer 1995 - Nov [6] (b) (ii) on page no. 198

1999 - May [4] (b) (i) Briefly explain the distinguish between Future goods and Contingent goods. (5 marks)

Answer:

Future Goods and Contingent Goods: Those goods which are yet to be manufactured or produced or acquired by the seller after the making of the contract of sale, are called, "future goods". Thus, future goods are not in existence at the time of the contract of sale or if they are in existence they have not yet been acquired by the seller by that time. When a present sale is made for some future goods, it is in fact not sale but an agreement to sell. (Section 2(6) and 6(3) of the Sale of Goods Act, 1930).

According to Section 6(2) of the Sale of Goods Act, contingent goods are goods the acquisition of which by the seller depends upon a contingency which may or may not happen. They are also a type of future goods and therefore, a contract for sale of contingent goods operate as an agreement to sell.

Contingent goods are different from future goods in the same that the procurement of contingent goods is dependent upon an uncertain event, whereas the obtaining of future goods does not depend upon any such uncertainty.

1999 - Nov [2] (v) Point out any four major differences between a sale and an agreement to sell. (5 marks)

Answer:

Difference between a sale and an agreement to sell: According to Section 4 of the Sale of Goods Act, 1930, a contract of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price, whereas under an agreement to sell, the transfer of the property in the goods is to take place at a future date.

- In a sale, the seller can sue the buyer for the price of the goods, but in an agreement to sell, the aggrieved party can sue for damages only and not for price.
- In a sale, a subsequent loss or destruction of the goods is the liability of the buyer, but the liability remains with the seller if it is agreement to sell.
- In sale, seller's breach gives the buyer to sue for damages and also remedy of recovery the goods from third parties who bought them. But in an agreement to sell, buyer's remedy is for a suit of damages.

1999 - Nov [4] (i) Briefly explain the difference between Sale and Hire-purchase Agreement. (5 marks)

Answer:

Please refer 1995 - Nov [6] (b) (ii) on page no. 198

2000 - May [3] (ii) Distinguish between sale and agreement to sell under the Sale of Goods Act. (10 marks)

Answer:

Sale and Agreement to sell distinguished:

- (a) A sale implies an agreement plus a conveyance of property. In an agreement to sell, there is no conveyance, the conveyance takes place at a future date.
- (b) In a sale, the property in the goods passes to the buyer and risk also passes to the buyer. In agreement to sell, since property does not pass to the buyer, risk also does not pass to the buyer.
- (c) A sale is an executed contract. An agreement to sell is an executory contract.
- (d) In a sale, the seller can sue the buyer for the price of the goods. In an agreement to sell, the aggrieved party can sue for damages only and not for the price unless the price was payable at a stated date.
- (e) In a sale, a subsequent loss or destruction of the goods is the liability of the buyer, but the liability remains with the seller, where the transaction only amounts to an agreement to sell.
- (f) In an agreement to sell, the seller, being still the owner, may dispose of the good as he likes and the buyer's remedy would be to file a suit for damages. In a sale however, the seller's breach gives the buyer the double remedy, a suit for damages against the seller, and the remedy of recovering of goods from third parties who bought them.
- (g) In a sale, in case of default by buyer, seller can sue the buyer for price even if goods are in his possession and can resell the goods. In an agreement to sell, the seller's remedy in case of default, is to sue for damages for breach and not the price even though the goods are in the possession of the buyer.

(h) In case of sale, if the seller becomes insolvent, while the goods are still in his possession, the buyer shall have a right to claim the goods from the official receiver or assignee. In case of agreement to sell, when the seller becomes insolvent, the buyer's remedy is to claim rateable dividend from the estate of the insolvent seller for the price paid and not for the goods, since property in them still rests with the seller. If the buyer becomes insolvent, the seller can refuse to deliver the goods to the official receiver or assignee unless the price is paid to him, in the case of agreement to sell. In the case of sale, in the absence of right of lien over the goods, the seller must deliver the goods to the official receiver/assignee of the buyer and is entitled to rateable dividend only from the estate of the insolvent buyer.

2018 - Nov [1] {C} (c) Differentiate between Ascertained and Unascertained Goods with example. (4 marks)

Answer:

The basic point of distinction between ascertained and un-ascertained goods with example can be discussed as under :
Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the act but has been judicially interpreted. In actual practice the term 'ascertained' goods is used in the same sense as 'specific' goods' when from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Example:- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods, becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

Un-ascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract.

They are indicated or defined only by description or sample.

Example : If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of un-ascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.

DESCRIPTIVE QUESTIONS

1995 - May [5] (e) What are the essentials of a contract of 'Sale'?

(5 marks)

Answer:

Essential of a Contract of Sale: Section 4(1), of the Sale of Goods Act, 1930, defines a contract of sale, as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

From the above definition, the following essentials can be deduced:

1. There must be at least two parties one seller, two the buyer.
2. There must be an agreement between the two parties for sale or an agreement to sell.
3. The subject matter of the contract must necessarily by goods, may be existing goods or future goods, ascertained goods or unascertained goods.
4. There should a price, which is to be paid in money.
5. A transfer of property in goods from seller to buyer must take place.
6. The contract may be absolute or even conditional.
7. All the essential characteristics of a valid contract must exist.

1996 - May [2] (d) A contract of sale is not avoided even on account of breach of condition. (5 marks)

Answer:

Contract of sale not avoided on breach of condition: Section 13 of the Sales of Goods Act, 1930 provides certain circumstances where under a condition is treated as a warranty and hence the contract of sale is not avoided even on account of breach of a condition. In the following cases this rule is applicable:

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1. Where the buyer altogether waives the performance of the condition. A party may for his own benefit waive a stipulation.
2. Where the buyer elects to treat the breach of the condition as one of a warranty. In such a case he may only claim damages instead of repudiating the contract.
3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
4. Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

1996 - Nov [4] (a) The rule in sale of goods is "none can give or transfer what he does not himself possess". Are there any exceptions to this rule? Discuss. (5 marks)

Answer:

Exceptions to the Rule 'none can give or transfer what he does not himself has':

Section 27 of the Sale of Goods Act, states the above rule, i.e. 'None can give or transfer what he does not himself has'. However, the rule subject to the following exceptions stated under Sections 28-30 of the Act.

These are:

1. **By estoppel:** Where the owner is estoppel by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true the owner and the above rule shall not apply.
2. **Sale by a mercantile agent:** Sale by a mercantile agent to goods or document of title to goods under the following conditions.
 - (a) The agent has the possession of goods with the consent of the owner,
 - (b) He sells them in the ordinary course of business,
 - (c) The buyer buys in good faith.
3. **Sale by one of the joint owners:** When one of the several owners having the possession of the goods sells them out and the buyer buys in good faith.

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4. **Sale by a person in possession under voidable contract:** When the seller who has obtained the possession of the goods under a voidable contract and has no rescinded the contract till the time of such sale, sell such goods.
5. **Sale by one who has already sold the goods but continues in possession thereof:** Under these circumstances, if the seller sells the goods and the buyer buys in good faith without notice of the previous sale. Similarly, a pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.
6. Sale by buyer obtaining possession before the property in the goods has vested in him, if sells, pledges or otherwise disposes such goods to a person who in good faith and without notice of the lien or other right of the original seller in respect of the goods, devolves a good title to such person.
7. **Sale by an unpaid seller:** An unpaid seller who had exercised his right of stoppage in transit, sells such goods again, the buyer of such goods acquires a good title to the goods as against the original buyer.
8. **Sale under the provisions of the other Acts:**
 - (a) Sale by, an official receiver or liquidator of the company.
 - (b) Purchase of goods from a finder of goods.
 - (c) Sale by a pawnee under default of pawnor.

1997- May [3] (b) Describe the conditions implied in a contract for sale of goods by—

- (i) Description, and
- (ii) Sample. (10 marks)

Answer:

- (i) **Sale by description:** Where there is a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the description of the article is different in any respect, the other party is not bound to take it.

The sale of goods by description may include:

1. Where the buyer has not seen the goods and relied on their description given by the seller.

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2. Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.
3. The packing of the goods may some times be a part of the description.

(ii) **Sale by Sample:** In the case of contract for sale by sample, there is an implied condition that—

1. The bulk shall correspond with the same in quality.
2. The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
3. The goods shall be free from any defect rendering them unmerchantable which would not be apparent on a reasonable examination of the sample. This implied condition applies only to latent defects, i.e., defects which are not discoverable on a reasonable examination of the sample. The seller is not responsible for the defects which are patent i.e. visible by examination of the goods. In such a case, there is no breach of condition as to merchantability.

Section 15 of the Sale of Goods Act also provides that if the sale is by sample as well as by description, the goods must correspond both with the sample and with the description.

1997 - Nov [5] (d) How the price of the goods may be ascertained in case of sale of goods? (5 marks)

Answer:

Ascertainment of Price: The meaning of the price and the rule regarding ascertainment of the price of the goods is contained in Sections 2(10), 9 and 10 of the Sale of Goods Act respectively, as follows:

'Price means' the monetary consideration for sale of goods. The price may be fixed by the contract or agreed to be fixed in a manner provided by the contract, e.g., by a valuer or determined by the cause of dealings between the parties. When it can not be fixed in any of the above ways, the buyer is bound to pay to the seller a reasonable price. What is a reasonable price is a question of fact in each case (Section 9).

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Section 10 provides for the determination of price by a third party. Where there is an agreement of sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the others to the other party who is not at fault. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

1998 - May [2] (d) "Agreement to sell, differs from sale." (5 marks)

Answer:

Sale and Agreement to sell differ to each other: According to Section 4(3) of the Sale of Goods Act, when the property in the goods is transferred to the buyer immediately on making of a contract, it is called a 'sale'. On the other hand, when the property in the goods is to be transferred on some future date or on the fulfilment of certain conditions, it is called an 'agreement to sell'. Section 4(4) further provides that an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

The main points of distinction between the two are as under:

Sale	Agreement to sell
1. It implies an agreement plus a conveyance of property.	1. Here there is no conveyance It takes place at a future date.
2. The property in the goods passes to the buyer and along therewith the risk.	2. Since property in the goods does not pass to the buyer, the risk also does not pass to him.
3. It is an executed contract.	3. It is an executory contract.
4. The seller can sue the buyer for the price of the goods because of the passage of the property therein to the buyer.	4. The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.

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5.	A subsequent loss or destruction of the goods is the liability of the buyer.	5.	Such loss or destruction is the liability of the seller.
6.	Breach on the part of the seller gives the buyer double remedy; a suit for damages against the seller and a proprietary remedy of recovering the goods from third parties who bought them.	6.	The seller, being still the owner of the goods, may dispose of them as he likes, and the buyer's remedy would be to file a suit for damages only.

1998 - Nov [2] (e) In a sale of goods 'goods' sold must be of merchantable quality. (5 marks)

Answer:

Goods Must be of merchantable Quality: It is one of the implied conditions that the goods sold to a customer must be of merchantable quality. Section 16(2) of the Sale of Goods Act provides: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods are of merchantable quality. The expression "merchantable quality" though not defined in the Act, nevertheless connotes goods of such a quality and in such condition that a man of ordinary prudence would accept them as goods of that description. Goods should also be such as are commercially saleable under the description by which they are known in the market at their full value. If goods are of such a quality and in such a condition that a reasonable person acting reasonably would accept them after having examined them thoroughly, they are of merchantable quality.

Sub-section (2) of Section 16 further provides that where the buyer has examined the goods, there is an implied condition as regards defects, which such examination ought to have revealed. [Proviso to Section 16(2)].

2000 - Nov [5] (d) What are the essentials of a Contract of Sale? (5 marks)

Answer:

Please refer 1995 - [5] (e) on page no. 203

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2018 - May [1] (c) What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery. (4 marks)

Answer:

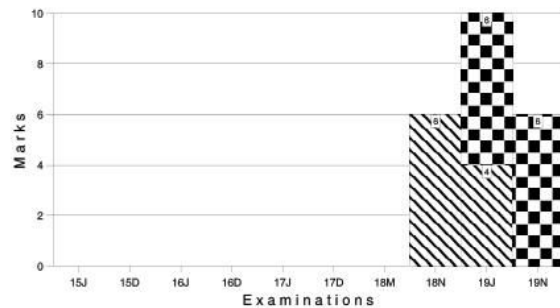
Delivery means voluntary transfer of possession from one person to another. It may be made by doing anything, which has the effect of putting the goods, in the possession of the buyer, or any person authorized on his behalf.

Various modes of delivery are as follows:

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

CHAPTER	
2	The Sale of Goods Act, 1930
Unit: 2	Conditions and Warranties

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



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for registration and password see first page of this book.

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SELF STUDY QUESTIONS

Q.1: Describe the Stipulation as to time in Contract of Sales.

Answer:

- Before concluding a contract of sale, certain statement are made by the contracting parties.
- Statement may be stipulation - one by seller on the reliance of which the buyer makes the contract.
- Statement may not be a stipulation if it is a mere recommendation by the seller thus, does not give rise to any action.
- "A **stipulation** or a **representation** is a contract of sale with reference to goods which are subject thereof, may be a condition or a warranty."

Q.2: Define the Terms - Conditions and Warranties.

Answer:

- "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 and claim damages."
- "A warranty is a stipulation collateral to the main purpose of the contract, i.e. a subsidiary promise the breach of which give rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated."
- As per **section 11**: Stipulation as to time of payment are not the condition unless such an intention appears from the contract.

Q.3: When a condition a Contract of Sale may be Treated as a warranty.

Answer:

- Where the buyer waives the performance of the condition altogether, the party may for his own benefit waive a stipulation.
- Where the buyer himself opts to treat the breach of condition as a warranty.

- Where the contract is indivisible and the buyer has accepted either the whole goods or any part thereof.
- Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Q.4: How many types of Conditions are there?

Answer:



Q.5: Define the "Express Conditions" in a Contract of Sale.

Answer:

- Condition is expressed when the terms of contract expressly state them.
- They are agreed upon between the parties at the time of contract and are expressly provided in the contract.
- It does not negate an implied condition.

Q.6: What are the Implied conditions in a Contract of Sale?

Answer:

- Conditions are implied, when the terms are not expressly provided for.
- They are presumed by law to be present in the contract.
- They may be neglected or waived by an express agreement.
- It includes :
 - (i) Condition as to title.
 - (ii) Condition as to sale by description.
 - (iii) Condition as to sale by sample as well as description.
 - (iv) Condition as to quality and fitness.
 - (v) Condition as to merchantability.
 - (vi) Condition as to sale by sample.
 - (vii) Condition as to wholesomeness.

Q.7: What are the Conditions as to title in a Contract Sale?

Answer:

- It presumes that the seller has a valid title to the goods.
- Seller has right to sell the goods in case of sale.
- In case of agreement to sell, he will have the right to sell the goods at the time when the property is to pass, unless there is a contract to the contrary.
- If seller's title turns out to be defective, the buyer may return the goods to the true owner and recover the price from the seller.

Q.8: What are the Condition as to Sale by Sample as well as Description in a Contract of Sale ?

Answer:

- Here, the implied condition is that the bulk of goods supplied must correspond both with the samples as well as with the description.

Q.9: What are the Condition as to Quality and fitness in a Contract of Sale?

Answer:

- Here the implied condition operates on the fulfilment of the following conditions:
 - (i) The buyer requires the goods for a particular purpose which he has made known to the seller.
 - (ii) The buyer relies on the skill and judgement of the seller.
 - (iii) The seller sells such type of goods.
- If the goods are bought under a patent or trade name, there is no such condition.

Q.10: What are the Condition as to Merchantability ?

Answer:

- It means that when the goods are bought by description from a seller who deals in such goods, it is implied that goods will be of merchantable quality.
- It is immaterial whether the seller is manufacturer or producer or not.
- It does not operate where the buyer examines the goods prior to the sale and examination ought to have revealed the defects.

Q.11: What are the Conditions as to Wholesomeness ?

Answer:

- In Case of eatables and other provisions, there is an implied condition of wholesomeness i.e. fit for consumption, other than merchantability.

Q.12: What are the Conditions in Cash of Sale by sample?

Answer:

There is an implied condition that:

- (i) The bulk shall correspond with the sample in quality.
- (ii) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (iii) The goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Q.13: What are the Types of Warranty ?

Answer:



Q.14: What is the Express Warranty in a Contract of Sale ?

Answer:

- It is a warranty which has been expressly agreed on by the parties at the time of contract of sale.

Q.15: What are the kinds of Implied Warranty, under the Provision of Sale of Goods Act,1930? Describe the all types of Warranty ?

Answer:

- It is a warranty which the law presumes that the parties have incorporated is into their contract.
- It may be excluded by the course of dealing between the parties.

- It includes:
 - (i) Warranty as to undisturbed possession.
 - (ii) Warranty as to non- existence of encumbrances.
 - (iii) Warranty as to dangerous nature of goods.
 - (iv) Warranty as to quality of fitness by usage of trade.

Warranty as to undisturbed possession [Section 14 (b)]

- An implied warranty in that the buyer shall have and enjoy the quiet possession of the goods.
- If buyer is later on disturbed in his possession, he is entitled to sue the seller.

Warranty as to Non- Existence of Encumbrances [Section 14(c)]

- As implied warranty is that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time of entering into contract.
- If defects are known to the buyer at the time of entering in to contract, he is not entitled to ask for any compensation from the seller for discharging the encumbrance.

Warranty implied by the custom or usage of trade [Section 16(3)]

- An implied warranty or condition as to quality of fitness for a particular purpose may to be annexed by the usage of trade.

Warranty as to dangerous Nature of goods:

- If goods are dangerous, any the buyer is not aware of such danger, it is implied warranty that the seller should warn the buyer about it else he will be liable for damages caused to the buyer.

SHORT PRACTICE QUESTIONS

1. When is condition be treated as warranty?
2. What are the type of warranty ?
3. Define Doctrine of caveat Emptor.
4. Distinguish between conditions and warranty.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1998 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (x) If a seller does not disclose the dangerous nature of the goods to be sold to the buyer he breaches the contract. (2 marks)

Answer:

Incorrect: If a seller does not disclose the dangerous nature of the goods to be sold to the buyer and the buyer is ignorant of the danger, it is a breach of implied warranty. In case of implied warranty it is the duty of the seller to warn to the buyer of the probable danger of the dangerous nature of the goods. It is not breach of condition but it is merely a breach of implied warranty and the seller will be liable for damages.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (x) Where the buyer elects to treat the breach of condition as one of warranty, he may repudiate the contract. (2 marks)

Answer:

Incorrect: Section 13 of the Sale of Goods Act, 1930 lays down that where the buyer elects to treat the breach of condition as one of a warranty, he may only claim damages instead of repudiating the contract.

SHORT NOTES

1996 - Nov [7] Write short notes on the following:

- (d) Rule of 'caveat emptor'. (5 marks)

Answer:

Rule of Caveat Emptor: In olden days, goods were sold on the foot paths and therefore, the buyer had the opportunity to see the goods himself and decide whether they suit to his purpose or the quality of goods is satisfactory to his requirements. Therefore, the rule of "Caveat Emptor" prevailed. The rule meant, 'let the buyer beware', he should see and satisfy himself about the condition and the purpose for which he requires the goods, the seller shall not be duty bound to tell the buyer about the suitability of the goods as regards quality or fitness for the use by the buyer. If therefore, while making purchases of goods the buyer depend upon his own skill and makes a bad choice, he must curse himself only and not the seller, of course in the absence of any misrepresentation or fraud or guarantee by the seller. The rule of caveat emptor is laid down in the opening lines of Section 16, which states that "subject to the provisions of this Act or of any other law for the time being in force, there is as implied warranty on condition as to one quality or fitness for any particular purpose of goods supplied under a contract of sale.

Things have changed now. The buyers depend upon the sellers for their purchases in majority of the cases so far as the quality and fitness and suitability for the purpose are concerned. Therefore, this rule is now subject to certain exceptions.

1999 - May [7] Write short notes on the following:

- (e) Implied warranties in a contract of sale. (5 marks)

Answer:

Implied Warranties in a contract of sale:

- (i) **Warranty of quiet possession [Section 14(b)] Sale of Goods Act:**
In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequences of the seller's defective title to sell, he can claim damages from the seller.

- (ii) **Warranty of freedom from encumbrances [Section 14(c)]:** The buyer is entitled to a warranty that the goods are not subject to any change or right in favour are not subject to any change or right in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
- (iii) **Warranty as to quality or fitness by usage of trade [Section 16(4)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- (iv) **Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable for damages.

DISTINGUISH BETWEEN

1998 - May [4] (b) Distinguish between the following:

- (ii) Condition and Warranty. (5 marks)

Answer:

Condition and Warranty:

Condition	Warranty
(1) A condition is essential to the main purpose of the contract.	(1) It is only collateral to the main purpose of the Contract.
(2) The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	(2) The aggrieved party can claim only damages in case of breach of warranty.
(3) A breach of condition may be treated as a breach of warranty.	(3) A breach of warranty cannot be treated as a breach of condition.

DESCRIPTIVE QUESTIONS

1994 - Nov [5] Answer the following:

- (d) When the doctrine of 'Caveat Emptor' does not apply to the sale of goods? (5 marks)

Answer:

The term Caveat Emptor means let the buyer beware; i.e. it is the duty of the buyer to select the goods of his requirement. The seller is in no way responsible for the bad selection of the buyer and not bound to disclose the defects in the goods which is selling. If the goods turn out to be defective, the buyer cannot hold the seller responsible. This is known as the doctrine of 'Caveat Emptor'. This doctrine is however, subject to the following exceptions:

1. Where the buyer makes it known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
2. Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. (Section 15).
3. Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have been revealed by an ordinary examination [Section 16(2)].
4. Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample (Section 17).
5. Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description (Section 15).
6. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.

7. Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

1995 - May [4] (a) When can a 'Condition' be treated as a 'Warranty' under the Sale of Goods Act? (10 marks)

Answer:

A stipulation in a contract of sale may be either a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to the aggrieved party to terminate the contract while a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to claim for damages. But in some cases, a condition may be treated as warranty as given in Section 13 of the Sale of Goods Act. The effect is that the buyer cannot repudiate the contract but has to be satisfied with damages only. Such cases are discussed hereunder:

1. **Waiver by Buyer:** Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may (a) waive the condition, or (b) elect to treat the breach of the condition as a breach of warranty. The buyer has the option to accept the goods and claim damages from the seller. If he once decides to waive the condition, he cannot afterwards insist on its fulfillment.

Example: A agrees to buy from B, ten bags of wheat as per sample. B delivers the wheat, but it was not according to the sample. A has a right to reject the goods, but he may decide to accept the goods and treat this breach of condition as a breach of warranty.

2. **Acceptance of goods by buyer:** Where a contract of sale is not severable, i.e., it is indivisible and the buyer has accepted the goods or part thereof, the breach of any condition is to be treated as a breach of a warranty. In such a case it is not left at the option of the buyer. But if the contract is divisible then even though the buyer has accepted a part of the goods, he can still reject the remaining goods.

Now the question arises as to when the buyer can be said to have accepted the goods. In this connection Section 42 provides that the buyer is deemed to have accepted the goods:

- (a) when he intimates to the seller that he has accepted them or;
- (b) when he does any act in relation to the goods which is inconsistent with the ownership of seller or;
- (c) when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Example: A purchased 10 bags of rice from B according to the sample. When the goods were delivered, A resold the rice to P. P rejected the goods on the ground that it was not according to sample. Now A also wants to avoid the contract. Here A will not succeed because by reselling the goods to P, A has accepted the goods. Now he is to treat this breach of condition as a breach of warranty and be content with damages only.

1995 - Nov [2] Comment on the following:

- (e) A warranty is a stipulation collateral to the main purpose of the contract. (5 marks)

Answer:

Stipulation in Warranty: In every contract of sale of goods there are certain stipulations made with reference to goods which are the subject matter thereof. If the stipulation though not essential to the main purpose of the contract is collateral to the main purpose of the contract - that is to say - is a subsidiary promise - it is known as warranty. The effect of a breach of warranty is to give the aggrieved party a right to claim the damages. In case of the breach of warranty a buyer cannot repudiate the contract.

1995 - Nov [5] Answer the following:

- (d) What are the implied conditions in case of sale by sample? (5 marks)

Answer:

Sale by sample (Section 17 of Sale of Goods Act)

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition:

- (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. This condition is applicable only with regards to defects which could not be discovered by an ordinary examination of the goods (*Drummond and Sons vs. Van Inger*).

1996 - May [5] Answer the following:

- (e) State the law relating to sale by description. (5 marks)

Answer:

Implied conditions in a sale by description: The law relating to 'Sale by description' is contained in Section 15 of the Sale of Goods Act, 1930.

1. Though the Act has not defined the term 'description', a sale is deemed to be made by description:
 - (a) Where class or kind of goods has been specified e.g., Egyptian cotton.
 - (b) Where goods are described by its characteristics for identification e.g., dimensions for steel.
2. In a sale by description, there is an implied condition that goods shall correspond with description (by statement or representation as regards goods by its identity, place of origin or mode of packing etc) alone made by the buyer, which is essential for deciding either acceptance or rejection of goods by the buyer.

This implied condition goes to the root of the contract and the breach of it entitles the buyer to reject whether he is able to inspect them or not.

1996 - Nov [6] (a) Define the term 'warranty'. What are the kinds of implied warranties under the provisions of Sale of Goods Act, 1930? (10 marks)

Answer:

Definition of warranty: A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. The warranty has been defined under Section 12(3) of the Sale of Goods Act, 1930. 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.

Implied Warranties: The examination of Sections 14 and 16 of the Sale of Goods Act disclosed the following implied warranties:

1. **Warranty as to undisturbed possession:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Disclosure of dangerous nature of goods:** There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is breach of this warranty, the seller will be liable in damages.

1997 - May [2] Comment on the following:

- (d) "Breach of a condition in a sale of goods can be treated as a breach of warranty, but not otherwise." (5 marks)

Answer:

'Breach of a condition in a sale of goods can be treated as a breach of warranty, but not otherwise:

This statement is quite correct. Sections 12 and 13 of the Sale of Goods Act, throw light on this statement. The definitions given of these two terms under the Act are quite meaningful to support this statement.

"The condition in a contract of sale with reference to goods, is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated." [Section 12(2)].

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated." [Section 12(3)]

These definitions distinguish the nature of the two stipulations as well the effect of the breach of the stipulations. Condition is an important stipulation than warranty and the law gives a right to the aggrieved party to cancel the contract in case of a breach of this stipulation, which right is not available in the case of breach of a warranty. On this basis the above statement is supported.

1998 - Nov [3] (b) What is meant by the doctrine of 'Caveat Emptor'? State the circumstances under which the doctrine is not applicable. (10 marks)

Answer:

Caveat Emptor: In the case of sale of goods, the doctrine applicable is "Caveat Emptor" which 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 is selling. It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgement, the buyer cannot hold the seller responsible. The rule of Caveat Emptor is laid down in the opening lines of Section 16, which states that "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality of fitness for any particular purpose of goods supplied under a contract of sale".

Exceptions: The doctrine of Caveat Emptor is, however, subject to the following exceptions;

1. Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16(1)].
2. In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].

3. Where the goods are sold by description there is an implied condition that the goods shall correspond with the description.
4. Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have been revealed by ordinary examination [Section 16(2)].
5. Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description [Section 15].
7. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.
8. Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it own or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such case the buyer has a right to avoid the contract and claim damages.
9. If trade usage attached an implied warrants or a condition as regards quality of goods. [Section 16(3)].

2000 - May [2] Explain the following (Give brief answer):

- (v) When a condition in a contract of sale may be treated as a warranty? (5 marks)

Answer:

When a condition may be treated as a warranty (Section 13, Sale of Goods Act, 1930).

In the following case, a contract is not avoided even an account of a breach of a conditions. These are:

- (i) Where the buyer altogether waives the performance of the condition, a party may for his own benefit, waive a stipulation or

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- (ii) Where the buyer elects to treat the breach of the condition as one of a warranty i.e. he may only claim damages instead of repudiating the contract.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof, unless there is an express or implied term in the contract to the effect that it amounts to rejection of goods and repudiation of the contract.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

2000 - May [5] Explain the following:

- (v) Give the exceptions to the 'doctrine of caveat emptor' in Sale of Goods Act. (5 marks)

Answer:

Doctrine of Caveat Emptor ("Let the buyer beware"): It is no part of the seller's duty in a contract of sale of goods to give to the buyer an article suitable for a particular purpose or of a particular quality, unless such quality or fitness is made an express term of the contract. If the buyer makes a bad choice, he is to suffer for this own judgement.

Exceptions: The doctrine has no application:

- (i) If the seller has made a false representation relating to the goods and the buyer relies upon it to his detriment.
- (ii) When the seller has deliberately concealed a defect which is not apparent on the reasonable examination of goods.
- (iii) When the seller is a manufacturer or a dealer of the type of goods sold, and the buyer has communicated to him as the purpose for which the goods are required, and he relies on the skill or judgement of the seller. [Section 16(1), Sale of Goods Act, 1930].
The exception does not apply if the goods are bought under the patent or trade name.
- (iv) The goods shall be of "merchantable quality", in case of goods sold by description.
- (v) In the case of goods sold by sample, if the bulk does not correspond with the sample or if the buyer is not provided a reasonable opportunity of inspecting the goods. [Section 17(2)].

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- (vi) If the trade usage attaches an implied warranty or a condition as regards quality of goods. [Section 16(3)].
- (vii) In the case of sale by sample as well as description, if the bulk does not correspond with the description as well as sample. [Section 15].

2000 - Nov [2] Briefly answer of the following:

- (d) A contract of sale is not avoided even on account of breach of a condition. (5 marks)

Answer:

The Sale of Goods Act, 1930 defines a condition as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as having been repudiated. Thus it is clear from the definition, that the buyer gets the right to avoid the contract in case of a breach of a condition on a contract of sale of goods. But the law does not force the buyer to avoid the contract in case of breach of a condition. The buyer can treat the breach of a condition, as a breach of a warranty. He also gets a right to waive the condition. Further, where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof, then he cannot avoid the contract. Further, where the law excuses the fulfilment of a condition or warranty, then the breach of a condition shall not allow the buyer to repudiate the contract. Thus, a contract of sale can be avoided by the buyer in case of breach of a condition and therefore, the statement as given in the question is not true.

2001 - May [5] Briefly answer of the following:

- (d) What are the implied conditions in a Contract of Sale? (5 marks)

Answer:

It is open to the parties to include in their contract any number of conditions and warranties. But in addition to what the contract may provide, the law implies every sale of goods a number of conditions. They are read with every contract of sale. They are known as implied conditions. They are stated as under:

- (i) **Condition as to title (Section 14):** It is an implied condition in every sale that the seller has right to sell. That means the title of the seller is perfect.

- (ii) **Sale by description:** Section 15 lays down the condition that where the sale is by description the goods must correspond with description. If the goods does not correspond with the description the sale may be set aside.
- (iii) **Sale by description as well as be sample (Section 15):** Section 15 further provides that "if the sale is by sample as well as by description, the delivery of goods should correspond to description as well as sample.
- (iv) **Goods supplied must be fit for buyers purposes:** If the buyer has disclosed the purpose it should be fit for his purpose otherwise the contract may be set aside (Section 16(i)).
- (v) **Goods supplied should be of mercantile quality:** It is an implied condition of sale that goods must be of mercantable quality [Section 16(2)].

It is open to the parties to include any express condition in their contract. But an express condition does not negative a condition implied by the Sale of Goods Act, 1930.

2001 - Nov [3] (b) Define the terms 'Condition' and 'Warranty' as used in the Sale of Goods Act. Can a breach of warranty be treated as a breach of condition and vice-versa? (10 marks)

Answer:

"Condition" and "Warranty": Section 12(2) of the Sale of Goods Act, 1930, defines a condition as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to a right to treat the contract as having repudiated.

Section 12(3) of the Act defines a warranty as a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to repudiate the contract.

X buys a car from Y for touring purposes. The car is unfit for touring purpose. Here X can repudiate the contract since "touring purpose" is a condition for buying the car.

On the other hand, the horn of the car is defective. X can not repudiate the contract, since defective horn is only a warranty and horn can be repaired or replaced.

Whether a stipulation is a condition or a warranty depends in each case, on the construction of contract. 'Conditions and Warranties' may be either express or implied.

A warranty cannot be treated as a condition because it is a lesser importance to the concerned parties. But a condition may be treated as a warranty under the following circumstances:

- (1) The buyer altogether waives the performance of the condition.
- (2) The buyer elects to treat the breach of the condition as breach of warranty and claims damages only.
- (3) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- (4) Where the fulfilment of a condition or warranty is excused by law by reason of impossibility of performance or otherwise.

2001 - Nov [5] Briefly answer the following:

- (d) What are the implied conditions in a Sale by Sample? (5 marks)

Answer:

Implied conditions in a sale by sample:

A sale is by sample where there is a term in contract (express or implied) to that effect. The effect is that where goods are sold by sample, there should not be any latent defect which render the goods unmerchantable.

- (a) The bulk must correspond with the sample in quality.
- (b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) The goods shall be free from any defects rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. (Section 17, Sale of Goods Act, 1930).

2002 - May [5] Briefly answer the following:

- (d) When shall a condition be treated as a warranty? (5 marks)

Answer:

A condition shall be treated as a warranty in the following cases,.

1. **Voluntary waiver of condition:** Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may (a) waive the condition, or (b) elect to treat the breach of the condition as a breach of warranty [Section 13(1)]. If the buyer once decides to waive the condition, he cannot afterwards insist on its fulfilment.

2. **Acceptance of goods by buyer:** If the contract of sale is not severable and the buyer has accepted the goods or part there of, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, unless there is a term of the contract, express or implied, to the contrary. [Section 13(2)].

The provisions of Section 13 of the Sale of Goods Act, 1930 do not affect the cases where the fulfilment of any condition or warranty is excused by law by reasons of impossibility or otherwise. [Section 13(3)].

2002 - Nov [3] (b) What is meant by the doctrine of 'Caveat emptor'? State the circumstances under which the doctrine is not applicable (10 marks)

Answer:

Caveat Emptor: This means "Let the buyer beware", i.e. in a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill or judgement and makes a bad selection, he cannot blame anybody excepting himself.

The rule of caveat emptor is enunciated in the opening words of Section 16 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Exceptions: The doctrine of caveat emptor has certain important. The exceptions are given below:

1. **Fitness for buyer's purpose:** Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose [Sec. 16(1)].
2. **Sale under a patent or trade name:** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose [Proviso to Sec. 16(1)].

3. **Merchantable quality:** Where goods are bought by description 'from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed [Sec. 16(2)].
4. **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade [Sec. 10(3)].
5. **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals - defect which could not be discovered on a reasonable examination (i.e. where there is 'a latent defect' in the goods), the doctrine of caveat emptor does not apply.
6. **Sale by sample (Section 17):** when goods are bought by sample' the bulk must correspond with the sample and the buyer must have reasonable opportunity of inspecting the goods.

2018 - Nov [4] (a) What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"? (6 marks)

Answer:

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

The exceptions to the Doctrine of Caveat Emptor are:

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

2. **Goods purchased under patent or brand name:** In case where the goods are purchased under the patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. **Goods of merchantable quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat emptor is not applicable.
5. **Sale by Sample:** Where the goods are bought by sample, this rule of Caveat emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable.
7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat emptor is not applicable [Section 16(3)].
8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

2019 - June [1] (c) Discuss the various types of implied warranties as per the Sales of Goods Act 1930? (4 marks)

Answer:

Implied Warranties:

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

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

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

PRACTICAL QUESTION

2019 - June [5] (a) M/S Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood; Mango wood; Teak wood; Burma wood etc.

Mr. Das a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by 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.

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.

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The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

- (i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (6 marks)

Answer:

Caveat emptor means "let the buyer beware", i.e. in sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgement and makes a bad selection, he cannot blame any body except himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930, which runs thus, "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale."

The rule of caveat emptor does not apply in the following case:

Fitness for buyer's purpose :

Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgement and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be reasonably fit for the buyer's purpose.

In the given case Mr. Das had clearly intimated the seller of his specific purpose and the goods supplied by the seller were totally unfit for that purpose. The seller is bound to supply the goods that are reasonably fit for the purpose.

Held, the contract is avoidable by Mr. Das and he holds full right to either get his money back or to get right kind of wood as required for his purpose.

2019 - Nov [5] (a) Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg. to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

[Chapter ⇒ 2 Unit : 2] Conditions & Warranties ■ 2.235

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Explain the basic law on sale by sample under Sale of Goods Act, 1930? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? (6 marks)

Answer:

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

- (a) the bulk shall correspond with the sample in quality.
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) the goods shall be free of any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.

In the given case;

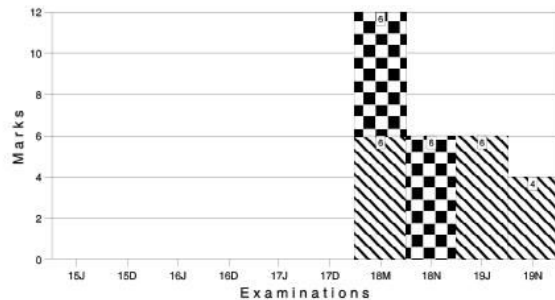
Mrs. Geeta casually examined the sample and did not notice that sample contained mix of long and short grains. Hence, Mrs. Geeta cannot avoid the contract and will not be successful in the suit. However if the buyer had specified her exact requirements, then seller must supply such goods which are reasonably fit for the given purpose.

CHAPTER	
2	The Sale of Goods Act, 1930
Unit: 3	Transfer of Ownership and Delivery of Goods

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

Objective Short Notes Distinguish Descriptive Practical



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

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[Chapter → 2 Unit : 3] Transfer of Ownership and... ■ 2.237

SELF STUDY QUESTIONS

Q.1: Describe the rules relating to passing of property in the Sale of Goods Act.

Answer:

Sale of goods involves transfer of ownership in three stages i.e. Passing of property → Delivery of goods → Passing of risk.

3.1 Passing of Property (Section 18-26)

- It means passing / transferring of ownership.
- If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may still be in the seller's possession.

Q.2: What are the rules Related to the Transfer of Ownership ?

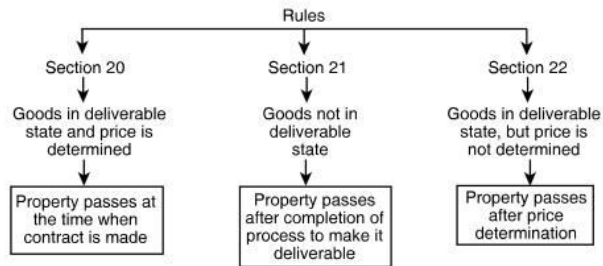
Answer:

- Risk passes with the ownership.
- Only owner have proprietary right over the goods. Owner can take action in case of goods being damaged by third party. When there is danger of good by the action of third party.
- Seller's right for price.
- If buyer/seller is declared insolvent it is necessary to know the party with whom the property in goods is there to know if it can be taken over by official assignee or not.
- Ownership and possession are two different concepts.

Q.3: Describe the Rules Regarding Passing of Property in Specific Goods.

Answer:

- It happens as and when the parties intend to pass. The intention must be gathered from the terms of contract of parties and circumstances of the case.



1. Where there is a contract for the sale of specific goods not in a deliverable state i.e. the seller has to do something to the goods to put them in a deliverable state, the property does not pass until that thing is done by seller and buyer has notice of it (Section 21).
 2. When there is a sale of specific goods in a deliverable state, but seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the price, the property to the goods for the purpose of ascertaining the price does not pass until such act or thing is done and buyer has notice of it (Section 22).
- Deliverable state refers to that state in which the buyer would be bound to take the delivery of goods.
 - Fact that the time of delivery or the time of the payment is postponed does not prevent property from passing it once (Section 20).
 - If goods are delivered to the buyer "on approval" or on sale or return basis":
The property passes to the buyer when:
 - He signifies his approval or acceptance to the seller.
 - He does any other act adopting the transaction.
 - He does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time.

Q.4: What are the Rules relating to Passing of Property in case of Sale of Unascertained Goods?

Answer:

(Future Goods)

- The property does not pass until the goods are ascertained.
- The ascertainment of goods and their unconditional appropriation to the contract are the two pre conditions for the transfer of property from seller to buyer.
- Ascertainment of goods is the process by which the goods to be delivered under the contract are identified and set apart.
- **Section 23:** Following conditions must be satisfied:
 - (i) Goods of description mentioned must be produced or obtained.
 - (ii) They must be in deliverable state.
 - (iii) They must be unconditionally appropriated.

Note: Unconditional Appropriation of Goods is when the seller delivers the goods to the buyer or at a carrier or other bailee for the purpose of transmission to the buyer.

- The assent of parties may be given either before or after the appropriation.
- In case of sale of quantity of goods out of a large quantity, property will pass on the appropriation of the specified quantity by one party with assent of the other.
- The property in goods does not pass if seller reserves the right of disposal of goods.

Q.5: Describe the Exceptions Relating to Sec.23 of the Sale of Goods Act.

Answer:

- (i) If the goods are delivered to a railway administration for carriage by railway, the goods are deliverable to the order of the seller or his agent.
- (ii) If the seller sends bill of exchange along with bill of lading to the buyer for his acceptance, the property in goods does not pass unless he accepts the bill.

Q.6: Write the Exceptions regarding under Sec. 26 of the Sale of Goods Act,1930.

Answer:

- (i) If there is agreement between the parties.
- (ii) If the delivery of goods are delayed either due to buyer's or seller's default, goods are at risk of party in default.
- (iii) Trade Customs.

Q.7: Describe the Rules Regarding Transfer of Title.

Answer:

• **Section 27**

The general rule is where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than that the seller had.

- This rule is expressed in the Latin maxim "**Nemo dat quod non habet**" which means that no one can give what he has not got. i.e. no one can pass a better title than he himself has.

Example: A finds ring of B sell it to C, who purchase it in good faith so true owner B can have it from C.

- Even a bonafide buyer gets no valid title.

Q.8: What are the Exceptions under Sec.27 of the Sale of Goods Act,1930?

Answer:

- (i) Effect of estoppel
- (ii) Sale by mercantile agent
- (iii) Sale by joint owner
- (iv) Sale by person in possession under a voidable contract.
- (v) Sale by seller in possession after sale.
- (vi) Sale by buyer in possession after sale.
- (vii) Sale by an unpaid seller
- (viii) Sale by person under other laws.

Q.9: Define the Effect of Estoppel.

Answer:

Where the owner is stopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner.

Sale by a Mercantile Agent

Buyer will get a good title in the following cases:

- (a) If he was in possession of goods or documents with the owner's consent.
- (b) If the sale was made by him when acting in the ordinary course of business.
- (c) If buyer had acted in good faith.
- (d) At the time of a contract, buyer had no notice of the fact that seller has no authority to sell.

Q.10: What are Rules Related to Sale by a Joint Owner (Co-owner)?

Answer:

As per Section 28

- If one of the several joint owners,
- Who is in sole possession of the goods by the permission of other co-owners,
- Sell the goods,
- Buyer gets a good title to the goods,
- If done in good faith.

Q.11: Describe the Sale by a person in possession under a voidable contract.

Answer:

As per Section 29

- A buyer acquires a good title if goods are sold to him by seller having possession under a voidable contracts, provided it has not been rescinded until the time of sale.

Q.12: What are the Rule related to Sale by seller in possession after sale?

Answer:

As per Section 30

- Where the buyer with the seller's consent,
- Obtain possession of goods before property in them has passed to him,
- He may sell it to the third party,
- Third party obtains goods in good faith, and without notice of the lien,
- He would get a good time to them.

Q.13: Which Rule Applies in case of Sale by person under other laws?

Answer:

- A finder of goods has the power to sell the goods under certain circumstances also called "Quasi Contract".
- Sale of goods pledged by Pawnee Conveys goods title to buyer if
 - (a) Pawner or pledger makes default
 - (b) Pawnee has given reasonable notice to Pawnor
- Sale by official receiver, official assignee, receiver or liquidator conveys goods title to buyer.

Q.14: What do you understand by Performance of the Contract of Sale?

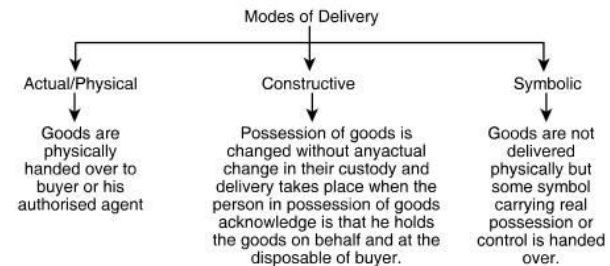
Answer:

(Section 31-44)

- It means voluntary transfer of possession from one person to another.
- It is the duty of seller to deliver the goods.
- Buyer's duty is to accept the goods and pay for them in accordance with the contract.

Q.15: How many types of Delivery are there?

Answer:



Q.16: Describe the all types of Delivery of Work Quantity.

Answer:

• **Delivery of Work Quantity**

- (a) **Short Delivery:** Buyer may either accept the goods and pay for it at a contract rate or reject it.
- (b) **Excess Delivery:** Buyer may accept or reject the delivery. If he accepts the whole of it, he shall pay for them at the contract rate.
- (c) **Mixed Delivery:** Buyer may accept the relevant goods and reject the rest or reject the whole.

- **Instalment Deliveries:** Unless otherwise agreed, buyer is not bound to accept delivery in installments.

Q.17: Describe the Suits for Breach of Contract.

Answer:

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

- Where the price is payable on certain day regardless of delivery; the seller may sue him for price.

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- Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer, may sue him for damages for non-delivery.

Q.18: Write a short notes on Acceptance of Delivery.

Answer:

- Acceptance is "deemed" to take place when the buyer:
 - (i) Intimates to the seller that he had accepted the goods,
 - (ii) Does any act to the goods, which is inconsistent with the ownership of seller,
 - (iii) Retains the goods after the lapse of reasonable time, without intimating to seller that he has rejected them.

SHORT PRACTICE QUESTIONS

1. State the significance of transfer of ownership.
2. Mention the rules relating to passing of property in case of sale of unascertainable goods.
3. "Risk Prima facie passes with the property." Explain
4. What are the modes of delivery of goods as per Sales of Goods Act, 1930.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reason whether the following statement is correct or incorrect:

- (ix) In a sale, the property of the goods is transferred from seller to the buyer in case of generic goods. (2 marks)

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Answer:

Incorrect: Section 18 of the Sale of Goods Act, states "Where there is a contract for the sale of unascertained (generic) goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained." Therefore, the goods are first to be ascertained and then only property in them passes to the buyer.

1996 - May [1] State with reason whether the following statement is correct or incorrect:

- (ix) When goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the seller. (2 marks)

Answer:

Incorrect: Under Section 40 of the Sale of Goods Act, 1930, where the goods are delivered at a distance place, the liability for determination necessarily incidental to the cause of transit will fall on the buyer, though the seller agrees to deliver at his own risk.

1996 - May [1] State with reason whether the following statement is correct or incorrect:

- (x) In a contract for the sale of unascertained goods, no property in the goods is transferred unless and until the goods are ascertained. (2 marks)

Answer:

Correct: Where there is a contract for the sale of unascertained goods, ascertainment of the goods is the first condition, and their appropriation to the contract, the second and thereupon the property passes to the buyer. (Section 18 of the Sale of Goods Act).

1996 - Nov [1] State with reason whether the following statement is correct or incorrect:

- (ix) A railway receipt is not a document of title. (2 marks)

Answer:

Incorrect: A railway receipt is a "document of title", within the definition of the term in Section 2(4) of the Sale of Goods Act, and enables the person mentioned as consignee to give a valid discharge in respect of the goods to which he relates.

2001 - May [1] State with reason whether the following statement is correct or incorrect:

(viii) The seller of the goods is bound to deliver the goods whether the buyer has applied for delivery or not. (2 marks)

Answer:

Incorrect: Apart from any express contract, the seller of goods is not bound to deliver the goods until the buyer applies for delivery.

2001 - Nov [1] State with reason whether the following statement is correct or incorrect:

(viii) In a Sale on Approval, the property in goods passes to the buyer on the delivery of the goods. (2 marks)

Answer:

Incorrect: According to Section 24(1) of the Sale of Goods Act, 1930, the property passes only when the buyer gives his approval or does some thing which is equivalent to approval or acceptance of such goods.

SHORT NOTES

1994 - Nov [7] Write short note of the following:

(c) Documents of Title to Goods. (5 marks)

Answer:

Documents of title to goods: A document of title to goods is one which enables its possessor to deal with the goods described in it as if he were the owner. It is used in the ordinary course of business as proof of the possession or control of goods. It authorises, either by endorsement or by delivery, its possessor to transfer or receive goods represented by it [Sec. 2(4)]. It symbolises the goods and confers a right on the purchaser to receive

the goods or to further transfer such right to another person. This may be done by mere delivery or by proper endorsement and delivery. But such document is not a negotiable instrument, for unlike 'a holder in due course', the transferee of such a document does not acquire a title better than the one held by transferor. Only *bona fide* holder of a document of title can enforce his right there under.

Some instances of documents of title to goods are bill of lading, dock warrant, warehouse keeper's or wharfingers' certificate, railway receipt and delivery order.

1995 - May [7] Write short note of the following:

(c) Symbolic delivery. (5 marks)

Answer:

Symbolic delivery: Delivery denotes a voluntary transfer of possession from one person to another. The delivery may be actual (i.e., by an actual transfer of physical custody), or symbolic (i.e., by causing a change in the possession of the goods without any change in their actual or visible custody). If the goods are bulky or ponderous or not capable of being actually handed over by the seller to the buyer, a symbol indicating the transfer of title of the goods may be given which will tantamount to delivery. **For example,** A sells to B 100 quintals of wheat lying in the possession of C, a warehouseman. A makes over to B, an order to C, called a delivery order, to transfer the wheat to B and C accepts such an order by transferring the wheat in his books to B. This would be construed as a symbolic delivery to B. In such a case complete access to the goods is essential otherwise it will not be a symbolic delivery (*Sanders vs. Maclean 1883*).

Thus in symbolic delivery the goods remain where they are, but the means of obtaining possession of goods is delivered. Other examples of symbolic delivery are bill of lading or railway receipt.

1997 - Nov [7] Write short note of the following:

(e) Kinds of Delivery of Goods. (5 marks)

Answer:

Kinds of Delivery of Goods: Delivery means voluntary transfer of possession by one person to another [(Section 2(2)]. As a general rule delivery of goods may be made by doing anything which has the effect of putting the goods in the possession of the buyer or any person authorised to hold them on his behalf. Delivery may be of three kinds which may be enumerated as follows:

- (i) **Actual delivery:** It is actual when the goods themselves are delivered to the buyer or the key of a warehouse containing the goods is handed over to him.
- (ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgment) e.g. where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.
- (iii) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in cause of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders.

DESCRIPTIVE QUESTIONS

1995 - May [6] (a) When may a non-owner of goods validly transfer the title of goods to another person, under the Sale of Goods Act? (10 marks)

Answer:

The general rule relating to the transfer of title on sale is that a person can not pass a better title than what he himself has. This rule is expressed by the maxim "*Nemo dat Quod non habet*", which means "no one can give what he has not got". Since the seller's title is defective the subsequent transferee's title will also be defective.

This rule has been stated in Section 27 which runs thus "subject to the provisions of this Act and of any other law, for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had".

Exceptions to this rule: Section 27 to 30 lay down the situations in which Nemo dat rule does not apply. These are as follows:

- (i) **Title by estoppel (Section 27):** Where the true owner by his conduct or by act or omission causes the buyer to believe that the seller has the authority to sell the goods and induces the buyer to buy them, he can not afterwards set up seller's want of title or authority to sell as defence. He shall be estopped or precluded from denying the authority of the seller to sell. The buyer in such a case gets a better title than that of the seller.
- (ii) **Sale by mercantile agent:** Where the mercantile agent is, with the consent of the owner, in possession of goods or of a document of title to the goods, any sale made by him shall be valid as if he is the owner of the goods, provided he has acted in good faith and has not, at the time of the contract of sale, noticed that the seller has not authority to sell.
- (iii) **Sale by a joint owner (Section 28):** If one of the several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale noticed that the seller has no authority to sell.
- (iv) **Sale by person in possession under voidable contract (Section 29):** When the seller of goods has obtained possession thereof under a voidable contract, but the contract has not been rescinded at the time of the contract of sale, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defective title.
- (v) **Seller in possession after sale [Section 30(1)]:** Where a seller having sold the goods continues to be in possession of the goods or documents of title to the goods, he may resell the goods and the new buyer will get a good title over the goods provided he acts in good faith, without notice of the prior sale, and obtains possession of the goods or documents of title to the goods.

- (vi) **Buyer in possession after sale [Section 30(2)]:** Where a person has bought or agreed to buy certain goods whose possession has been given over to him, but the seller, still has some lien or right over the goods, and the buyer sells the goods, the second buyer will get a title free from seller's right of lien provided he acts in good faith and without notice of any lien or other right of the original seller in respect of the goods [*Martin vs. Whale (1917)*].
- (vii) **Resale by unpaid seller:** Where an unpaid seller while after exercising his right resells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of resale has been given to the original buyer.
- (viii) **Sale by finder of lost goods:** Under certain circumstances, a finder of goods may sell them and convey a good title to the purchaser (Section 169 of Indian Contract Act).
- (ix) **Sale under order of the Court:** A transferee under a Court sale gets a good title notwithstanding he title or authority of his transferor.

1995 - Nov [4] (a) Describe the rules relating to passing of property in the sale of goods. (10 marks)

Answer:

Passing or transfer of property constitutes the most important element and factor to decide legal rights and liabilities of sellers and buyers. Passing of property implies passing of ownership. If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may still be in the seller's possession.

The primary rules relating to the passing of property in the sale of goods are:

- (1) No property in the goods is transferred to the buyer, unless and until the goods are ascertained.
- (2) Where there is a contract for sale of specific of ascertained goods, property passes to the buyer at the time when parties intend to pass it. For the purpose of ascertaining intention of the parties regard shall be had to the terms of contract, conduct of parties, and circumstances of the case. Where the intention of the parties cannot be ascertained, rules contained in Sections 20 to 24 shall apply.

For specific goods: Where there is an unconditional contract for the sale of specific goods in a deliverable state, property in the goods passes to the buyer when the contract is made (Section 20). Deliverable state means such a state that the buyer would under the contract be bound to take delivery of the goods. If the goods are not in a deliverable state, property does not pass until such a thing is done to put the goods in a deliverable state. This 'something' may mean packing the goods, testing, polishing, filling in casks etc. It should be noted that the property shall not pass when the goods are made in deliverable state but shall pass only when the buyer has notice of it (Section 21). But where they are in deliverable state, but the seller is bound to weight, measure, test or do some other act or thing for the purpose of ascertaining the price, the property does not pass until such act or thing is done. When the seller has done his part the property passes even if the buyer has to do something for his own satisfaction. (Section 22).

Unascertained goods: Until, goods are ascertained, there is merely an agreement to sell. The ascertainment of goods and their unconditional appropriation to the contract are the two pre-conditions for transfer of property from seller to buyer in case of unascertained goods. A seller is deemed to have unconditionally appropriated, where he delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer. (Section 23).

Goods sent on approval or "on sale or return": When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer, (i) when he signifies his approval or acceptance to the seller, (ii) when he does any other act adopting the transaction, and (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time. (Section 24).

1996 - May [6] (a) What are the rules regarding delivery of goods?

(10 marks)

Answer:

Rules regarding delivery of goods: The Sale of Goods Act prescribes the following rules of delivery of goods:

- (i) **Effect of Part delivery:** A delivery of part of goods, taking place in the course of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as delivery of the whole. But such part delivery, with the intention of severing it from the whole will not operate as a delivery of the remainder, it will be construed as part delivery only. (Section 34)
- (ii) **Buyer to apply for delivery:** The seller of the goods is not obliged to deliver them until the buyer has applied for delivery, unless otherwise agreed. (Section 35)
- (iii) **Place of delivery:** If there is no contract to the contrary, goods must be delivered at the place where they were at the time of sale, and the goods agreed to be sold are required to be delivered at the spot at which they were lying at the time the agreement to sale entered into, or if not then in existence, at the place where they would be manufactured or produced. [Section 36(1)].
- (iv) **Time of delivery:** When the time of sending the goods has not been fixed by the parties, the seller must send them within a reasonable time. [Section 36(2)].
- (v) **Goods in possession of a third party:** Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. The issue or transfer of any document of title to goods operates as delivery, symbolic in character, even if the goods are in the custody of a third person without such attornment. [Section 36(3)].
- (vi) **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is reasonable hour is a question of fact. [Section 36(4)]
- (vii) **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be born by the seller, in the absence of a contract to the contrary. [Section 36(5)].
- (viii) **Delivery of wrong quantity:** In case of tender of lesser quantity of goods, the buyer may either accept the same and pay for it at the contract rate or reject it. [Section 37(1)]. In case of excess delivery the

- buyer may accept or reject the delivery, if he accepts the whole of the goods, he shall pay for them at the contract rate. [Section 37(2)]. In case the seller makes a delivery of the goods contracted mixed with goods of a different description, the buyer may accept the relevant goods and reject the rest or reject the whole [Section 37(3)]. Mixing of goods with inferior quality does not amount to a mixing of goods of different description. (*Hamarain v. Firm Radha Krishan Naraindas AIR 1949 Nag. 178*)
- (ix) **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. The rights and liabilities in cases of delivery by instalments and payments there for may be determined by the parties by contract. (Section 38)
 - (x) **Delivery to carrier:** Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer. [Section 39(1)].
 - (xi) **Deterioration during transit:** Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk. (Section 40).
 - (xii) **Buyer's right to examine the goods:** Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods. (Section 41)

1996 - Nov [5] (e) Explain the law relating to passing of risk in case of the sale of goods. (5 marks)

Answer:

Passing of the risk in the property to the buyer of goods: The general rule is, "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 the buyer's risk whether delivery has been made or not." Section 26.

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However, Section 26 also lays down an exception to the rule that 'risk follows ownership.' It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Thus in ordinary circumstances, risk is borne by the buyer only when the property in the goods passes over to him. However, the parties may by special agreement stipulate that 'risk' will pass sometime after or before the 'property' has passed.

1997 - Nov [2] Comment on the following:

(d) Delivery of the goods and payment of the price are concurrent conditions. (5 marks)

Answer:

The law in this regard is laid down in Section 32 of the Sale of Goods Act, 1930. The section says that unless otherwise agreed the delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of goods.

The general rule is that the obligations of the seller to deliver and that of the buyer to pay are implied concurrent conditions in the nature of mutual conditions precedent, and that neither can enforce that contract against the other without showing performance or offering to perform or averring readiness and willingness to perform his own promise.

This section lays down the rule as regards what are known as reciprocal promises to be simultaneously performed. In such a case no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise [**Pandurang vs. Dadabhay (1902) 26 Bom. 643**].

1998 - Nov [5] (e) When the property in the goods passes to the buyer in case of the delivery of the goods to the buyer on approval basis?

(5 marks)

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Answer:

Goods Delivered on Approval Basis: (Passing of the property). According to Section 24 of the Sale of Goods Act, 1930, the property in the goods passes to the buyer in case of the goods to the buyer on approval basis in the following manner:

1. when he signifies his approval or acceptance to the seller, or
2. does any other act adopting the transaction, or
3. if without signifying his approval or acceptance the buyer retains the goods without giving notice of rejection or rejection, then, if time fixed for the return of goods, on expiry of such time, and if no time is fixed, on the expiration of reasonable time.

1999 - May [2] Comment on the following:

(e) Risk prima facie passes with the property in the goods. (5 marks)

Answer:

Section 26 of the Sale of Goods Act, 1930 lays down the general rule that "*risk prima facie passes with the property*". In other words, risk always follows ownership and the owner has to bear the burden or loss. Thus, whoever is the owner, carries the risk. The goods remain at the seller's risk until the ownership therein is transferred to the buyer and the goods are at buyer's risk when their ownership is transferred to him whether the delivery has been made to him or not.

However, there are following exceptions to the general rule that risk prima facie passes with the property:

1. If the parties have by a special agreement stipulated that the risk will pass sometime after or before the ownership has passed.
2. Where the delivery of the goods has been delayed due to the fault of either the seller or the buyer, in such cases the goods are at the risk of that party who is responsible for such fault as resulted in loss of any kind. The defaulting party will bear the loss.
3. Sometimes trade customs may put the ownership and risk separately in two parties.

1999 - May [5] (e) When the ownership in the goods may be transferred by a person who is not having title over it? (5 marks)

Answer:

The general rule of law is that 'no one can give that which he has not got'. However under, the following cases the goods can be sold even by the persons who are not having title over it.

1. **Sale by a person not the owner or title by estoppel. (Section 27):** Sale of Goods Act i.e. where the true owner by his conduct, or by an act or omission, leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods he shall be estopped from denying the fact of want of authority of the seller. The buyer in such a case gets a better title than that of the seller.
2. **Sale by a mercantile agent (Proviso to Section 27):** Provided the agent is in possession of the goods or documents of title to the goods with the consent of the owner; the agent sells the goods while acting in the ordinary course of business of a mercantile agent; the buyer acts in good faith and the buyer has not at the time of the contract of sale notice that the agent has no authority to sell.
3. **Sale by one of several joint owners (Section 28):** If one of the several joint owners, who is in sole possession of the goods by permission of the other co-owners sells the goods, a buyer in good faith of those goods gets a good title to the goods.
4. **Sale by a person in possession under a voidable contract. (Section 29):** Where the seller of goods has obtained the possession under a voidable contract, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.
5. Sale by seller in possession after sale [Section 30(1)].
6. By buyer in possession after sale [Section 30(2)].
7. By an unpaid seller [Section 54(3)].

1999 - Nov [3] (ii) What are the exceptions to the doctrine of "Nemo dat quad non-habet" (one cannot give better title than what he has). (10 marks)

Answer:

The general rule is that the owner of goods can sell the goods. No one can convey a better title than he himself has. This rule protects the true owner as the buyer from a non-owner does not acquire a better title than what the seller had.

But the following are the exceptions to the above rule provided in the Sale of Goods Act, 1930:

- (a) **Sale by a mercantile agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely:
 - (i) If he was in possession of the goods or documents with the consent of the owner.
 - (ii) If the sale was made by him when acting in the ordinary course of business as a mercantile agent, and
 - (iii) If the buyer had acted in good faith and has at the time of a contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to section 27).
- (b) **Sale can be made by co-owner (Section 28):** If one of the several joint owners, who is in possession of the goods by permission of the other co-owners, sells the goods, a buyer in good faith of those goods gets a good title to the goods.
- (c) **Sale can be made by a person in possession under a voidable contract (Section 29):** When the seller of goods has obtained their possession under a voidable contract, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defects of title.
- (d) **Sale can be made by seller in possession after sale [Section 30(1)]:** Where a seller having sold goods, continues to be in possession of the goods or documents of title to the goods and sells them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

- (e) **Sale can be made by buyer in possession [Section 30(2)]:** When where a person, having bought or agreed to buy the goods, obtains, with the consent of the seller, possession of the goods or documents of title to the goods and sells them, the buyer who acts in good faith and without notice of any lien or other rights of the seller in respect of the goods, gets a good title.
- (f) **Effect of Estoppel (Section 27):** Where the owner is stopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner.
- (g) **Exceptions in Other Acts:**
- Sale by a finder of lost goods under certain circumstances (Section 169 of the Indian Contract Act).
 - Sale by a pawnee or pledgee under certain circumstances (Section 176 of the Indian Contract Act).
 - Sale by an official receiver or official assignee or liquidator of a company.

2000 - May [4] (ii) When the property in specific or ascertained goods passes to the buyer? (10 marks)

Answer:

Transfer of property in specific or ascertained goods to the buyer [Sale of Goods Act, 1930]: Passing of property implies passing of ownership. When property is transferred to the buyer, the risk of destruction or deterioration of the goods sold is that of the buyer and not of the seller, though the goods may still be in the seller's possession.

- (a) Where there is a contract for the sale of specific or ascertained goods, the property in the goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred (Section 19).
- (b) In an unconditional contract of sale of specific goods in a deliverable state. The property in the goods passes to the buyer when the contract is entered into. It is not affected by the time of payment of price or the time of delivery of the goods of both (Section 20).

- (c) Where there is a contract for sale of specific goods and the seller is bound to do something to the goods for putting them in a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof (Section 21).
- (d) Where there is a contract for sale of specific goods in a deliverable state, but the seller is bound to weight, measure, test or do some other act or thing for ascertaining the price, the property does not pass till such act or thing is done and the buyer has notice thereof (Section 22).

2000 - Nov [6] (a) State the rules of the Sale of Goods Act, relating to the delivery of goods:

- When it is given in instalments.
- When it is in excess of Contracted quantity. (10 marks)

Answer:

Rules of Sale of Goods Act, 1930 Relating to the Delivery of Goods:

- (i) **Where delivery of goods is given in instalments:**
Unless otherwise agreed upon, the buyer of the goods is not bound to accept delivery by instalments. However, under a contract, the goods sold may be delivered in instalments. In such a case each instalment shall be treated separately and paid for.
In the following two cases, there will be a breach of such a contract:
- Where the seller makes the delivery or makes defective delivery of one or more instalments; or
 - Where the buyer neglects or refuses to take delivery of one or more instalments.
- In each such breach, it will depend upon the terms of the contract and the circumstances of the case whether:
- the whole contract is repudiated; or
 - it is a severable breach giving rise to claim for compensation, but not a right to treat the whole contract as repudiated. (Section 38)
- (ii) **Where delivery of goods is given in excess of contracted quantity:**
Section 37(2) of the Act, Sale of Goods Act, 1930 deals with such a case.

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Where the seller makes a delivery to the buyer or to his agent of the excess quantity of goods than contracted for the buyer:

- (a) may accept the agreed quantity and reject the rest; or
- (b) he may reject the whole lot.
- (c) he may accept the whole lot even, and in such a case has to pay for the whole quantity at the contract rate.

2001 - May [2] Briefly answer the following :

- (d) Risk prima facie passes with the property. (5 marks)

Answer:

Please refer 1999 - May [2] (e) on page no. 255

2001 - May [4] (a) State the rules as to passing of the property, when goods are delivered on approval in a Contract of Sale. (10 marks)

Answer:

Section 24 of Sale of Goods Act, 1930 lays down rules as to passing of property when goods are delivered on approval or "on return". In such cases property in goods passes either by acceptance or by failure to return.

- (i) **By acceptance:** The property in goods passes when buyer signifies his acceptance or approval or otherwise adopts the transaction. Acceptance means acceptance of that part of the contract which makes him the purchaser absolutely. That will be some act which signifies that he intends to be the absolute purchaser. If he does some act which will be right only if he were the absolute purchaser that signifies an acceptance or adoption with in the statute where a person pawned the goods, he had no power of returning the goods unless he repaid the amount advanced by the Pawnee. That is inconsistent with his free power of returning the goods.

- (ii) **By failure to return (Section 24(2):**

The second circumstance in which the property in goods passes to buyer, is when the latter fails to return the goods with in reasonable time or if a time has been fixed on the expiration of that time. Till the expiry of such time, goods remains the property of the seller.

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Where a horse was delivered to the defendant on terms that he should try it for eight days and then return it if he did not like it. The horse died on third day without the fault of the defendant. The seller could not recover the price from the defendant, the horse being still his property when it perished (*Elphick v. Barnes (1880) SCPD. 32*).

On failure to return with in the specific time, the property passes to the buyer and the seller may then sue for price. Where no time is fixed, the goods should be returned with in reasonable time, or else they became they property of the buyer. What is reasonable time in a question fact in each case.

2001 - Nov [2] Briefly answer the following :

- (d) Risk in the goods sold passes with the delivery of goods to the buyer. (5 marks)

Answer:

Risk in the goods sold passes with the delivery of the goods to the buyer: Risk prima facie passes with ownership and not delivery. Passing of the risk is not very much related to the delivery of goods. Unless otherwise agreed upon, the goods remain at sellers risk until property therein has passed to the buyer. After passing of the property to the buyer, the goods remain at buyer's risk. Thus, risk is more related to the passing of the title than to delivery of the goods. The goods may be in the possession of the buyer but the title upon them may be with the seller. Thus, unless as agreed upon, the goods remain at seller's risk subject to the following two qualifications:

1. Delivery of the goods has been delayed by the fault of the buyer or the seller. In this case risk will be in the party to the default, and
2. Duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even where the risk has passed generally. However, parties may by special agreement stipulate about passing of the risk.

2002 - May [2] Briefly answer the following :

- (d) Transfer of property when goods are sold on approval. (5 marks)

Answer:**Goods on Approval:**

Under Section 24 of the Sale of Goods Act, 1930 when goods are delivered to the buyer on approval, the ownership in such goods passes to the buyer in any of the following situations:

1. When the buyer signifies his approval or acceptance to the seller.
2. When the buyer does some act which amounts to adoption of the transaction, i.e. the acceptance of the goods.
3. When the buyer fails to return the goods on the fixed time, namely, retains it beyond the fixed time without notice of rejection.
4. When no time has been fixed for the return of goods and the buyer retains the goods beyond reasonable time without giving notice of rejection. Reasonable time is a question of fact and hence will depend on facts and circumstances of every case.

2002 - May [3] (b) "Nemo dat quod non habet" i.e. one cannot sell what he does not possess. Discuss this statement and state the exceptions to this doctrine. (10 marks)

Answer:**Stranger to a Contract**

It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is known as the "*doctrine of privity of contract*". Privity of contract means relationship subsisting between the parties who have entered into contractual obligations. It implies a mutuality of will and creates a legal bond or tie between the parties. These are two consequences of doctrine:

1. A person who is not a party to a contract cannot sue upon it even though the contract is for the benefit and he provided consideration.
2. A contract cannot confer rights or impose obligation arising under it on any person other than the parties to it.

The following are the exceptions to the general rule that a stranger to a contract cannot sue:

1. **A trust or charge:** A person in whose favour a trust or other interest in some specific immovable property has been created can enforce it even though he is not a party to the contract. (*Madhav Trading Co. vs. Union of India*).

2. **Marriage settlement, partition or other family arrangements:** Where an arrangement is made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.
3. **Acknowledgment or estoppel:** Where the promisor by his conduct, acknowledges or otherwise constitutes himself as an agent of the third party, a binding obligation is thereby incurred by him towards the third party.
4. **Assignment of a contract:** The assignee of rights and benefits under a contract not involving personal skill can enforce the contract subject to the equities between the original parties. (*Krishan Lal Sadhu vs. Promila Bala*).
5. **Contracts entered into through an agent:** The principal can enforce the contracts entered into by his agent provided the agent acts within the scope of his authority and in the name of the principal.
6. **Convenants running with the land:** In case of transfer of immovable property, the purchaser of land with notice that the owner of the land is bound by certain conditions or covenants created by an agreement affecting the land shall be bound by them although he was not a party to the original agreements which contained the conditions of covenants. (*Tulk vs. Moxhay*).

2002 - May [7] Explain of the following (Give brief answers):

- (d) Meaning of Constructive Delivery

(5 marks)

Answer:**Meaning of Constructive Delivery:**

Where a third person (e.g., a bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery [Section 36(3)]. Sale of Goods Act, 1930.

This may happen in the following cases:

- (a) Where the seller in possession of the goods agrees to hold them on behalf of the buyer.

- (b) Where the buyer is in possession of the goods and the seller agrees to the buyer's holding the goods as owner.
 (c) Where the third person in possession of the goods acknowledges to the buyer that he holds them on his behalf.

2002 - Nov [5] (d) What is meant by Constructive Delivery? (5 marks)

Answer:

Constructive Delivery of goods

Delivery may be actual or constructive. In actual delivery actual transfer of physical custody takes place while in case of constructive delivery, the change in the possession of goods is caused without any change in their actual and visible custody. **For example**, A sells to B 100 quintals of wheat lying in the possession of C, a warehouseman. A makes delivery over to B, by an order to C, called a delivery order, to transfer the wheat to B, and C accepts such an order by transferring the wheat in his books to B. This would be considered as a constructive delivery to. Thus, constructive delivery may take place in any of the following manner:

- (i) The seller in possession of the goods agrees to hold them on behalf of the buyer.
- (ii) The buyer is in possession of the goods but the seller agrees to the buyer's holding the goods as owner.
- (iii) A third person is in possession of the goods but acknowledges to the buyer that he holds them on his behalf.

2018 - May [4] (a) What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. (6 marks)

Answer:

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials regarding appropriation of unascertained goods are as follows:

- (a) There is a contract for the sale of unascertained goods or future goods.
- (b) The goods should conform to the description and quality stated in the contract.

- (c) The goods must be in a deliverable state.
- (d) Goods must be unconditionally appropriated.
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer, or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after the appropriation.

2019 - June [4] (a) "A non-owner can convey better title to the bonafide purchaser of goods for value". Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of Sales of Goods Act 1930? (6 marks)

Answer:

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

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

1. **Sale by a Mercantile agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer if sale is made with the consent of the principal.
2. **Sale by One of the Joint Owners:** If one of several joint owners of goods has the sole possession of them by permission of the Co-owners, the property in the goods is transferred to any person who buys from such joint owner in good faith.
3. **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, etc. provided that the contract had not been rescinded until the time of sale.

4. **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold the goods but continues to be in possession of them or of the documents of title to them, he may sell them to third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although property in goods had passed to the first buyer earlier.
5. **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien, he would get a good title to them.
6. **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, transferee will get a good title as against the true owner.
7. **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit, resells the goods, the buyer acquires a good title to the goods as against the original buyer.
8. **Sale under provisions of other Acts:**
- Sale by an official receiver/ liquidator.
 - Purchase of goods from finder of lost goods.
 - A sale by pawnee can convey a good title to the buyer.

PRACTICAL QUESTION

2018 - May [5] (a) Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per The Sale of Goods Act, 1930. (6 marks)

Answer:

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

Thus, in the given case, Mr. D can recover damages from Mr. E and can repudiate the contract as well.

2018 - Nov [5] (a) 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? (6 marks)

Answer:

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

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2019 - Nov [1] {C} (c) State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. (4 marks)

Answer:

The property in unascertained goods or future goods does not pass until the goods are ascertained.

Such goods are defined only by description and not as goods identified and agreed upon when the contract is made.

The following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods.

The property in such goods passes to the buyer when the goods in a deliverable state are unconditionally appropriated to the contract.

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.






The essentials are:

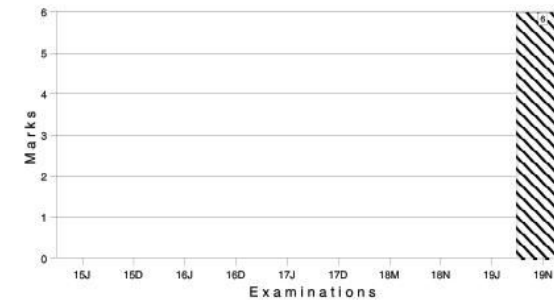
- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality stated in contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer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

CHAPTER	The Sale of Goods Act, 1930
2	
Unit: 4	Unpaid Seller

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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SELF STUDY QUESTIONS

Q.1: Define Unpaid Seller.

Answer:

As per Section 45, seller is deemed to be an unpaid seller, when:

- (i) Whole of the price has not been paid or tendered and seller had an immediate right of action for the price.
- (ii) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute and not a conditional payment.

Q.2: What are the Rights of an Unpaid Seller ?

Answer:

- Right of lien or retention
- Right of stoppage in transit
- Right of resale
- Right to withhold delivery

Q.3: What are the Rights of unpaid seller against the goods ?

Answer:

1. Seller's lien (Section 47):

- It can be exercised on the goods for the price while he is in possession until the payment of price of such goods. It can be exercised in following cases:
 - (i) Where the goods have been sold without any stipulation as to credit.
 - (ii) Where goods have been sold on credit but the terms of credit has expired.
 - (iii) Where buyer becomes insolvent.
- The right depends upon physical possession.
- It can only be exercised for the non-payment of price.

Part Delivery (Section 48):

- In case of part delivery, lien can be exercised of remaining goods unless contrary provided in the agreement.

Q.4: Which Conditions will be Applies in Termination of lien ?

Answer:

As per Section 49

This right is terminated under following circumstances:

- (i) Where he delivers goods to carrier or bailee for the purpose of transmission to buyer without reserving the disposal right.
- (ii) Where buyer or his agent lawfully obtains possession of goods.
- (iii) Where seller has waived the right of lien.
- (iv) By estoppel

Q.5: What are the Rights of stoppage in transit ?

Answer:

- Right of stoppage in transit (Section 50)
- It means right to stop the further transit of goods, to resume possession and to hold the same till the price is paid
- It can be exercised in following cases:
 - (i) Seller must be unpaid
 - (ii) He must have parted with the possession of goods
 - (iii) Goods are in transit
 - (iv) Buyer has become insolvent
 - (v) Right is subject to provisions of the act.
- Insolvent here means that a person has ceased to pay his debts the ordinary course of business or cannot pay his debts as they become due.

Q.6: What do you Understand by Duration of transit?

Answer:

As per Section 51

Goods are deemed to be in transit from the time they are delivered to carrier or other bailee for transmission until buyer or his agent takes delivery of them.

- The right is lost under following cases:
 - (i) Buyer taking delivery
 - (ii) Acknowledgment by carrier
 - (iii) Delivery to ship

- (iv) Wrong denial to deliver by carrier
- (v) Sub sale
- (vi) Goods in possession of ship's master acting as buyer's agent
- If buyer rejects the goods and carrier or bailee continues to be in its possession, the transit does not ends, even if seller refuses to receive them back.

Q.7: How stoppage in transit is effected ?

Answer:

As per Section 52

- It may be exercised by:
 - (i) Taking actual possession of goods or.
 - (ii) Giving notice of his claim to carrier/bailee who hold the goods.

Q.8: Distinguish between right of lien and right of stoppage in transit.

Answer:

Basis	Right of Lien	Right of Stoppage in Transit
Solvency	The right can be exercised even when the buyer is solvent buy refuses to pay the price.	The right can be exercised only when the buyer has become insolvent.
	The goods must be in actual possession of the seller.	The goods must be in the possession of a carrier or other bailee who is acting as an independent person.
Purpose	The purpose of the right is to retain possession of the goods.	The purpose of this right is to regain the possession of the goods.
Mode of exercising right	This right can be exercised by the seller himself.	This right can be exercised by the seller through the carrier or the other bailee.

Q.9: Define the Effect of sub-sale or pledge by buyer.

Answer:

As per Section 53

It not effected by any sale or other disposition of goods made by buyer, unless the seller has assented to it.

Q.10: What are the Rights of re-sale ?

Answer:

As per Section 54

- It can be exercised in following cases:
 - (i) Where the goods are of perishable nature, buyer need not be informed of the intention of resale.
 - (ii) Where he gives notice to the buyer of his intention to resell the goods, the buyer does not within or reasonable time pay or tender the price.
 - (iii) Where the right is expressly reserved in the contract.
- If no notice has been given to the buyer of intention to re-sell, unpaid seller cannot claim any damages and buyer will be entitled for all profits.
- Unpaid seller can recover from buyer the balance amount (if any) on resale.
- If notice has been given to buyer, then profit origin out of sale of goods won't be shared with buyer. Only seller with hold the samples.

Q.11: What are the Rights of unpaid seller against the buyer ?

Answer:

As per Section 55-61

Rights of unpaid seller against buyer:

- Suit for price
- Suit for damages for non-acceptance

Q.12: Write Short notes on Suit for price ?

Answer:

As per Section 55

- Seller may sue—

- (i) Where the property has passed to the buyer and he wrongfully neglects or refuses to pay for goods.
- (ii) Where the property has not passed and price is payable on a certain day irrespective of delivery and buyer wrongfully neglects or refuses to pay such price.

Q.13: Write Short notes on Suit for damages for non-acceptance.

Answer:

As per Section 56

- The seller may sue the buyer for non-acceptance, where he wrongfully neglects or refuses to accept and pay the goods.

Q.14: Describe the Repudiation of contract before due date.

Answer:

As per Section 60

- If buyer repudiates the contract before date of actual delivery, seller may treat contract rescinded and sue for the breach.

Q.15: Write Short notes on Suit for interest.

Answer:

As per Section 61

- If there is a specific agreement for interest on price, seller can recover interest from the date on which payment becomes due.
- If no specific agreement, seller may charge interest from the day he notify the buyer about the payment being due.

Q.16: What are the Conditions Applies on Remedies of buyer against the seller ?

Answer:

- (i) Damages for non-delivery
- (ii) Suit for specific performance (only in case when goods are ascertained or specific)
- (iii) Suit for breach of warranty
- (iv) Repudiation of contract before due date and sue for damages for breach
- (v) Suit for interest

Q.17: What you understand by Auction Sale ?

Answer:

As per Section 64

- It is a mode of selling property by inviting bids publically and the property is sold to the highest bidder.
- It is a public sale where goods are offered to be taken by bidders.
- Auctioneer is only an agent of seller.
- Following rules apply—
 - (i) Where goods are put up for sale in lots, each lot is treated to be the subject of a separate contract of sale.
 - (ii) Sale is complete when the auctioneer announces its completion by fall of hammer or in another customary manner.
 - (iii) Right to bid may be reserved expressly by or on behalf of seller.
 - (iv) If such right is not reserved, it is not lawful for the auctioneer knowingly to take any bid from seller.
 - (v) Sale may be notified to be subject to a reserve or upset price.
 - (vi) If seller makes use of pretending bidding to raise the price, sale is voidable at the buyer's option.

Q.18: Write Short note on Inclusion of Increased or Decreased taxes in contract of sale.

Answer:

As per Section 64A

- If after entering into the contract of sale, tax revisions takes place.
- Buyer needs to pay increased price in case is increase in taxes and vice-versa unless anything contrary is stated in agreement.

SHORT PRACTICE QUESTIONS

1. Define unpaid seller.
2. Differentiate between right of lien and right of stoppage in transit.
3. What are the rights of unpaid seller against the buyer?
4. Write short note on Auction Sale.
5. State the remedies of buyer against the seller.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (x) An unpaid seller who is in possession of goods sold, can exercise the right of lien even when the property has passed to the buyer. (2 marks)

Answer:

Correct: According to Sec. 47(2) of the Sale of Goods Act, the seller may exercise his right of lien notwithstanding that he is in possession of goods as agent or bailee for the buyer. Therefore, an unpaid seller may exercise the right of lien (being a possessor right of goods) even when the property has been passed to the buyer.

1995 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (ix) A seller can never bid at an auction sale. (2 marks)
(x) An unpaid seller can exercise the right of stoppage of goods in transit if the buyer becomes insolvent. (2 marks)

Answer:

(ix) **Incorrect:** Section 64(3) of the Sale of Goods Act permits a seller to reserve his right to bid and when the right is so reserved, the seller or any one person on his behalf may bid at the auction.

(x) **Correct:** As per the provisions of Section 50, of the Sale of Goods Act, an unpaid seller has the right to stop the goods in transit when the buyer becomes insolvent. The conditions are that the goods must be in transit and the buyer must have become insolvent.

1996 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (x) When goods are delivered to the buyer and he refuses to accept them, he is not bound to return the goods to the seller. (2 marks)

Answer:

Correct: Section 43 of the Sale of Goods Act clearly provides that where goods are delivered to the buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

1997 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (viii) The right of lien by an unpaid seller can be exercised for the non-payment of price of goods and other charges. (2 marks)

Answer:

Incorrect: The unpaid seller is given 'right of lien' over the goods, only in case of non-receipt of the price of goods and not for any other charges.

1997 - Nov [1] State with reasons whether the following statements are Correct or Incorrect:

- (vii) In an auction sale, goods to be auctioned can be put for sale in lots. (2 marks)
(viii) 'Right of lien' and 'right to stoppage the goods in transit' may be exercised simultaneously by an unpaid seller. (2 marks)

Answer:

(vii) **Correct:** Section 64 of the Sale of Goods Act, 1932 provides that in the auction sale where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.

(viii) **Incorrect:** Right of lien is exercisable as long as the seller is in possession of goods whereas Right of Stoppage in transit is exercisable as long as the goods are passing through channels of communication for the purpose of reaching in the hands of the vendee.

1998 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (vii) After completion of the sale in an auction, the property in the goods and the risk of the loss caused in an accident to the auctioned property therein, is transferred to the bidder. (2 marks)
- (viii) Where the goods are of perishable nature the unpaid seller cannot re-sell the goods without any notice to the buyer. (2 marks)

Answer:

(vii) **Correct:** Section 26 of the Sale of Goods Act, 1930 lays down that unless otherwise agreed, the goods remains at the seller's risk until the property therein is transferred to the buyer. When property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Therefore, the property in the goods and risk of loss thereof has been passed to the bidder and the buyer has to bear the loss.

(viii) **Incorrect:** According to Section 53(2) and (3) of the Sale of Goods Act, 1930, a unpaid seller should give a notice to the buyer of his intention to re-sell the goods. However, in respect of perishable goods no such notice appears to be compulsory.

1998 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ix) In an auction sale, seller or any other person on his behalf may bid at the auction. (2 marks)

Answer:

Correct: A bid can be made provided such a right is expressly reserved by the seller. According to Section 64(3) of the sale of Goods Act, 1930, in the case of a sale by auction, a right of bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions herein after contained bid at the auction.

1999 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vii) 'Right of lien' and 'right to stoppage the goods in transit' may be exercised simultaneously by an unpaid seller. (2 marks)

Answer:

Please refer 1997 - Nov [1] (viii) on page no. 277

2000 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (vii) Right of lien is linked with the possession of goods. (2 marks)

Answer:

Correct: The unpaid seller has a lien on the goods, for the price, while he is in possession of goods, until the payment or the tender of the price. A lien is a right to retain possession of goods, until payment of the price.

2000 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (viii) In an auction sale, a bid once made cannot be withdrawn by the bidder. (2 marks)

Answer:

Incorrect: The bidder can withdraw his bid anytime before the fall of the hammer i.e. completion of sale.

2002 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (vii) A seller of goods shall be called an 'Unpaid seller' even when a part payment of the price of goods sold has been made to him by a buyer. (2 marks)

Answer:

Correct: According to Section 45(1) of Sale of Goods Act, 1930 a seller of goods is deemed to be an unpaid seller when the whole of the price has not been paid. Hence the seller shall be called an unpaid seller even when a part payment of the price of goods has been made.

2002 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (viii) In an auction sale, seller or any other person on his behalf may bid at the auction, if such a right is expressly reserved. (2 marks)

Answer:

Correct: According to Section 4(3) of the Sale of Goods Act, 1930 in an Agreement to Sell the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled. Hence the property in the goods does not pass to the buyer immediately.

SHORT NOTES

1994 - Nov [6] Write short note on:

- (a) Who in an 'unpaid seller'? Discuss briefly, his rights under the Sale of Goods Act. (10 marks)

Answer:

Unpaid Seller: According to Section 45(a) of the Sale of Goods Act, the seller of goods is deemed to be an 'Unpaid Seller' when:

- the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- a bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Any person who is in a position of a seller, is also a seller, any may exercise the rights conferred upon an 'unpaid seller' in above said circumstances. For instance, an agent of the seller, to whom bill of lading has been endorsed, is in the position of seller and may exercise rights of 'unpaid seller'.

Rights of an unpaid seller: An unpaid seller has been expressly given the rights against the goods as well as the buyer personally which are discussed as follows:

A rights of an unpaid seller against the goods: The unpaid seller has the following rights against the goods whether the property in the goods has passed to the buyer or not.

- Rights of lien (Sec. 47):** He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. The right of lien can be exercised by him in the following cases only:
 - Where goods have been sold without any stipulation of credit;
 - Where goods have been sold on credit but the term of credit has expired; or
 - Where the buyer becomes insolvent.
 However, the unpaid seller loses his right of lien under the following circumstances:
 - When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
 - Where the buyer or his agent lawfully obtains possession of the goods.
 - Where seller has waived the right of lien.
 - By Estoppel i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.
- Right of stoppage in transit:** When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer. However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
 - The seller must be unpaid.
 - He must have parted with the possession of goods.
 - The goods are in transit.
 - The buyer has become insolvent.
 - The right is subject to provisions of the Act.
- Right of re-sale:** The unpaid seller can exercise the right to re-sell the goods under the following conditions:
 - When the goods are of a perishable nature. In such a case the buyer need not be informed of the intention of resale.

- (ii) When the gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

1995 - Nov [7] Write short note on:

- (e) Buyer's Rights Against the Seller. (5 marks)

Answer:

Buyer's Rights Against the Seller:

- (i) Buyer has right to examine the goods purchased by him. Where the goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract [Section 41(1)].
- (ii) Unless otherwise agreed when the seller tenders delivery of goods to the buyer, he is bound, on required to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract [Section 41(2)].
- (iii) Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them (Section 43).
- (iv) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them [Section 37(i)].
- (v) If the goods delivered are larger than he contracted, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.
- (vi) If the goods ordered have been mixed with goods of different description the buyer may accept the goods as contracted and reject the rest, or may reject the whole.
- (vii) Besides, the buyer has all the rights against the seller in case if there is a violation of any kind of stipulation or condition or warranty, the contract may be avoided on damages may be claimed for the loss caused, if any.

1996 - May [4] Write short note on:

- (a) Describe the law relating to the "right of resale" available to an unpaid seller in the Sales of Goods Act, 1930. (10 marks)

Answer:

Right of resale: This right of resale available to an unpaid seller may be described as follows (Section 54(2), Sale of Goods Act, 1930):

1. Where the goods are of a perishable nature, the unpaid seller may re-sell the goods without any notice to the buyer.
2. When the unpaid seller has exercised his right of lien or stoppage in transit, he has to give notice to the buyer of his intention to re-sell. Thereupon, the buyer may pay the price within a reasonable time. If the buyer does not pay, the unpaid seller can re-sell the goods and recover from the original buyer the damages for any loss occasioned by his breach of contract. The original buyer shall not be entitled to any profit which may occur on re-sale. If however, the unpaid seller re-sells the goods without notice to the buyer, the unpaid seller shall not be entitled to recover damages and the buyer shall be entitled to the profit, if any, occurring on the re-sale.
3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, the buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of resale has not been given by the seller to the original buyer.
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale has the effect of rescinding the contract, but it does not prejudice any which the seller may have for damage against the buyer.

1997 - May [5] Write short note on:

- (e) What are the remedies available to the buyer, when goods in wrong quantity are delivered to him? (5 marks)

Answer:

Wrong quantity may be either short delivery to the buyer a quantity of goods less than he contracted to sell the buyer may reject them. But if the buyer accepts the goods so delivered he shall pay for them at the contract price. By accepting the lesser quantity the buyer is not debarred from suing or damages on the ground of short delivery.

- (a) **Short delivery:** When the seller delivers to the buyers a quantity of goods less than he contracted to sell the buyer may reject them. But if the buyer accepts the goods so delivered he shall may pay for them at the contract price. By accepting the lesser quantity the buyer is not debarred from suing for damages on the ground of short delivery.
- (b) **Excess delivery:** Where the seller delivers to the buyer a quantity of goods larger than contracted for the buyer has the option:
- (i) to accept the contracted quantity and reject the excess or
 - (ii) to accept the whole and pay for them at the contract price or
 - (iii) to reject the whole quantity.
- (c) **Mixed delivery:** Where the seller delivers to the buyer the goods he contracted to sell mixed with the goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or reject the whole. When the goods wrong quantity are delivered the buyer has the option to reject the whole lot and if he does so it does not amount to cancellation of the contract. The seller has the right to deliver the goods contracted for and the buyer shall be bound to accept the same.

1997 - May [7] Write short note on:

- (e) Liability of an incoming partner. (5 marks)

Answer:

An incoming partner is not liable for any act of the firm done prior to his admission as a partner. This is because the old partner were not the agents of the new partners at the time when they acted. By a mutual agreement, the new partners may agree with the old partners to be liable for the past liabilities of the firm. However, the creditors of the firm cannot sue the new partners for their past debts, because there is no privity of contract between the creditors and the new partner. Similarly the acts of the old partner can not be ratified by the new partner because he was not in existence as a principal at the time when acts were done. He is liable for the acts of the old firm only if the new firm assumes the liabilities of the old firm and the creditors accept the new firm as their debtor and discharge the old firm from his liability.

1997 - Nov [3] Write short note on:

- (b) Describe in brief the rights of the buyer against the seller in case of breach of contract of sale. (10 marks)

Answer:

Buyer's rights against the seller in case of breach of contract: Sections 57 to 59 & 61 of the Sale of Goods Act, 1930, proceed to deal with the remedies of a buyer in cases where the seller commits a breach of the contract. They are as follows:

- (i) **Damages for non-delivery (Section 57):** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. In this case the general rules as regards to the ascertainment of the damages given under Section 73 of the Contract Act, 1872 and the rule in Hadley vs. Baxendale will be applicable.
- (ii) **Suit for specific performance (Section 58):** Where property has passed to the buyer, he also can exercise another right, i.e. a right to sue for specific performance and its limits regulated by the Specific Relief Act. In such cases the court may, in its discretion grant a decree ordering the seller to deliver those specific or ascertained goods which formed the subject matter of the contract. The remedy is discretionary and will only be granted if the goods are of specific value or are unique, e.g., a rare book, a picture or a piece of jewellery, and the damages are not an adequate remedy.
- (iii) **Remedy for breach of warranty (Section 59):** Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject of the goods; but he may:
 - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (b) sue the seller for damages for breach of warranty.
 The measure of damage for breach of warranty is the estimated loss or damage arising directly or naturally from the breach, which is *prima facie* the difference between the value of the goods at the time of the delivery and the value they would have had if the goods had answered to the warranty.

- (iv) **Suit for recovery of price (Section 61):** The buyer has a right to recover the money paid to the seller where the consideration for payment of it has failed. For example, where the buyer is deprived of goods by their true owner, he may recover the price for breach of the condition as to title.

1998 - May [3] Write short note on:

- (b) Discuss the remedies available to seller against the buyer in case of breach of contract of sale. (10 marks)

Answer:

Remedies available to the seller against the buyer: Following remedies are available to the seller against the buyer in case of the breach of contract of sale:

- (i) **Suit for price:** Where the property in the goods has passed to the buyer or he was wrongfully neglected or refused to pay for the goods according to the terms of the contract, the seller may sue him for the price of goods. Further, where the price is payable under the contract 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 even if the property in the goods has not passed and the goods have not been appropriated to the Contract. (Section 55).
For instance, there was a sale of some quantity of iron to be delivered between 3rd May and 30th June, if the buyer so required, the price to be paid on the latter date at all cost. By 30th, only a portion of the iron had been delivered since the buyer did not require any further delivery. In such situation, the seller would be able to recover the whole price without showing that he had appropriated to the contract any specific iron to complete the delivery of the remainder. Incidentally, the seller has a lien on the goods for the price while he is in possession of them. The statement in a contract of sale that the seller would have the right to resell after notice will not deprive him of his legal right to sue for the price of the goods if he so desires.
- (ii) **Damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Some of the rights of an unpaid seller viz., lien stoppage in transit, and resale are additional rights. These, however, do not compensate the seller for the breach of the contract but simply protect him from additional loss; the breach of the contract, no doubt remains and the seller is entitled to be compensated for the same. The above referred remedies under Section 55 and 56 deal with the remedies available to a seller and may be exercised by him (seller).

- (a) If the property in the goods sold has already passed to the buyer the seller can either sue for price or for damages for non-acceptance [Section 55(1) and 56].
- (b) If the property in the goods sold has not passed the seller's only remedy is to sue for damages for non-acceptance (Section 56), but the seller can even if the property has not passed, bring an action for the price if it is "payable on a day certain" and the buyer has failed to pay such price [Section 55(2)].
- (c) 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. In this case the seller's right will not be affected where the neglect or refusal of the buyer to take the delivery amounts to a repudiation of the contract - (Section 44).
- (d) The seller's right of re-sale is available subject to the provisions of Section 54(2) and (4).
- (e) How much damages will be awarded to the seller in case of the breach of contract of sale by the buyer will be reassured according to the provisions of Section 73 and 74 of the Indian Contract Act, 1872.

1999 - May [3] Write short note on:

- (b) Who is an 'Unpaid Seller'? When can such a seller exercise his 'Right of Lien' against the goods? Explain the rules for exercising the right of lien by an unpaid seller. (10 marks)

Answer:

A seller be deemed to be an unpaid seller when:

1. the whole of the price has not been paid or tendered.
2. a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise. (Section 45(1) Sale of Goods Act, 1930).

Thus the following conditions must be fulfilled before seller can be deemed to be an unpaid seller:

1. He must be unpaid and the price must be due.
2. He must have an immediate right of action for the price.
3. A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

Right of an unpaid seller :

Right of Lien: (Section 46(1)(a), 47 to 49).

A lien is a right to retain possession of goods until payment of the price. It is available to the unpaid seller who is in possession of the goods sold, where:

- (a) The goods have been sold without any stipulation as to credit;
- (b) The goods have been sold on credit, but the terms of credit has expired;
- (c) The buyer becomes insolvent [Section 47(1)].

Rules regarding lien:

1. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer [Section 47(2)]. If he loses the possession of the goods, he loses the right of lien also.
2. The lien depends on actual possession and not on title. It is not affected even if the seller has parted with the document capable of transferring title.
3. The possession of the goods by the seller must not expressly exclude the right of lien.
4. The lien can be exercised by the unpaid seller only for the price and not for any other charges such as warehouse or dock charges.
5. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder. He may refuse to deliver such remainder of the goods till he is paid for the goods already delivered and the goods are yet to be delivered.

Where, however, a part of the goods is delivered under such circumstances as to show an agreement to waive the lien, the seller cannot retain the remainder [Section 48].

6. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods [Section 49(2)].

1999 - Nov [5] Write short note on:

- (iii) Stoppage in transit. (5 marks)

Answer:

Stoppage in Transit: (Section 50 Sale of Goods Act, 1930): It is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

This right is exercised by the seller when:

- (a) He is unpaid.
- (b) He may have parted with the possession of goods.
- (c) The goods must be in transit.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

The unpaid seller may exercise this right either by taking actual possession of the goods or by giving notice of his claim to the carrier, or other bailee in whose possession the goods are. The right of stoppage in transit begins when the right of lien ends.

2000 - May [6] Write short note on:

- (ii) State the provisions given under Sale of Goods Act relating to 'Auction Sale'. (10 marks)

Answer:

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

Under section 64 of the Sale of Goods Act, 1930 in the case of an auction:

- (a) Where goods are put for sale in lot, each lot is *prima facie* deemed to be subject matter of a separate contract of sale.
- (b) The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- (c) Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- (d) Where the sale is not notified to be subject to the right of the seller to bid, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any person representing him. Any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) The sale may be notified to be subject to a reserve or upset price; and
- (f) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

2001 - Nov [7] Write short note on:

- (d) Unpaid seller's right to re-sale. (5 marks)

Answer:

An unpaid seller's right to resale: (Section 54 Sale of Goods Act, 1930).

1. When the goods are of a perishable nature, the unpaid seller may re-sell the goods without any notice to the buyer.
2. When the unpaid seller has exercised his right of lien or stoppage in transit, he has to give notice to the buyer of his intention to resell. Then only he will be entitled to recover any loss and keep all profits with him. Otherwise not. But so far as the new buyer's title is concerned it will be good whether the seller gives or does not give notice to the first buyer.

2002 - Nov [6] Write short note on:

- (a) State the provisions given under Sale of Goods Act relating to 'Auction Sale'. (10 marks)

Answer:

Please refer 2000 - May [6] (ii) on page no. 289

DESCRIPTIVE QUESTIONS

1995 - May [2] (c) When an unpaid seller's right of lien ends, his right to stop the goods in transit begins. (5 marks)

Answer:

When an unpaid seller's right of lien ends, his right to stop the goods in transit begins: Lien is the right of an unpaid seller to retain the goods, which are under his actual possession, until the price due in respect of them is paid or tendered. Lien being a possessor right, when the goods are delivered to the carrier for the purpose of transmission to the buyer (the possession being imparted by the unpaid seller), the right of lien comes to an end but so long the goods are in transit, the seller still has a right to stop them in transit. The right of stoppage means the right to stop further transit of goods to resume possession over the goods and to retain them until the price is paid.

The right of stoppage in transit arises only when the seller has parted with the possession of the goods and the buyer has become insolvent. This right is available only so long the goods are in transit i.e., they are in possession of a third party, they are neither in the possession of the seller nor that of the buyer. In this sense it is said that, right of stoppage in transit is an extension of the right of lien. The point where the right of lien ends, right to stoppage in transit begins.

1996 - Nov [2] (d) Sub-sale by the buyer does not extinguish unpaid seller's right of lien. (5 marks)

Answer:

Sub-sale and rights of unpaid seller: The unpaid seller's right of lien or stoppage in transit is not affected by any further sale or other disposition of the goods by the buyer. (Section 53 of the Sale of Goods Act).

However, there are two exception to the said rule:

- (a) When the seller was assented to the sale, mortgage or other disposition of the goods made by the buyer. [Sub-Section (1)].

(b) When a document of title of goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for price, then, the proviso of Sub-Section (1) of Section 53 prescribes as follows:

- (i) If the last mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or
- (ii) If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the pledgee.

However, the pledgee may be required by the unpaid seller to use in the first instance, other goods or securities of the pledger available to him to satisfy his claim [Sub-Section (2)].

1998 - Nov [4] (b) (ii) Right of lien and Right of stoppage of goods in transit available to an unpaid seller. (5 marks)

Answer:

Right of Lien and Right of Stoppage in Transit:

1. The unpaid seller's right to stop the goods in transit arises only when the buyer is insolvent but the right of lien can be exercised even when the buyer is able to pay but does not pay.
2. The right of lien can be exercised on goods which are in actual or constructive possession of the seller, while right of stoppage in transit can be exercised when the goods are in the possession of a middleman between the seller who has parted with the possession of the goods and the buyer who has not yet acquired the possession.
3. The right of lien comes to an end when the possession of the goods is surrendered by the seller, but the right of stoppage in transit commences when the goods have left the possession of the seller and continues until the buyer has acquired their possession.
4. The right of lien is to retain possession while the right of stoppage in transit is to regain or resume possession.

2002 - May [4] (b) (ii) Right of lien and Right of stoppage of goods in transit available to an unpaid seller. (5 marks)

Answer:

Please refer 1998 - Nov [4] (b) (ii) on page no. 292

2019 - Nov [4] (a) What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (6 marks)

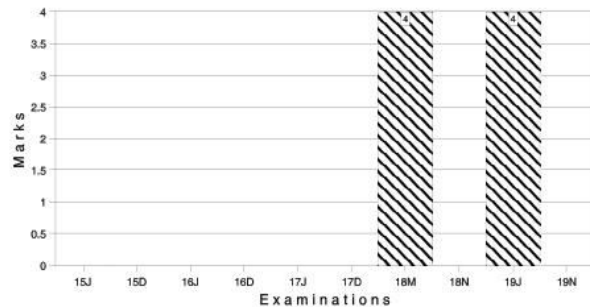
Answer:

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

- (a) **A lien or right of retention:** An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e. keep the goods in his possession and refuse to deliver them to the buyer until the fulfilment or tender of the price. This right depends upon physical possession i.e. it is a possessory lien. Lien is lost as soon as the seller parts with the goods.
- (b) **The Right of Stoppage in transit:** The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming the possession of them and retaining possession until payment of the price.
- (c) **Right of re-sale:** The unpaid seller may re-sell:
 - (i) Where the goods are perishable.
 - (ii) Where such right is expressly resumed.
 - (iii) Where seller tenders notice to buyer of his intention to re-sell and buyer still does not tenders price within a reasonable time.
- (d) **Right to withhold delivery:** If the property in the goods has passed, the unpaid seller has right as described above. If however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

CHAPTER	3	Indian Partnership Act, 1932
Unit: 1		

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



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[Chapter → 3 Unit : 1] General Nature of a Partnership ■ 2.295

INDIAN PARTNERSHIP ACT, 1932

- Section 1** : Short title
- Section 2** : Definitions
- Section 3** : Application of provision of Act, 9 of 1872
- Section 4** : Definition of Partnership
- Section 5** : Partnership not created by status
- Section 6** : Mode of determining existence of partnership
- Section 7** : Partnership at will
- Section 8** : Particular Partnership
- Section 9** : General Duties of Partners
- Section 10** : Duty to indemnify for loss caused by fraud.
- Section 11** : Determination of rights and liabilities
- Section 12** : The conduct of the business
- Section 13** : Mutual rights and liabilities
- Section 14** : The property of the firm
- Section 15** : Application of the property
- Section 16** : Personal profits earned by Partners
- Section 17** : Rights and duties of partners
- Section 18** : Partner to be agent of the firm
- Section 19** : Implied Authority of Partner
- Section 20** : Extension and restriction of Partner's implied authority
- Section 21** : Partner's Authority in an emergency
- Section 22** : Mode of doing act to bind firm
- Section 23** : Effect of admission by a partner
- Section 24** : Effect of notice to acting partner
- Section 25** : Liability of a partner for acts of the firm
- Section 26** : Liability of the firm for wrongful acts by a partner
- Section 27** : Liability of firm for misapplication by partners
- Section 28** : Holding out
- Section 29** : Rights of transferee of a partner's interest
- Section 30** : Minors admitted to the benefits of partnership
- Section 31** : Introduction of a partner

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- Section 32** : Retirement of a partner
Section 33 : Expulsion of a partner
Section 34 : Insolvency of a partner
Section 35 : Rights of outgoing partner to carry on competing business
Section 36 : Same
Section 37 : Rights of outgoing partner in certain cases
Section 38 : Revocation of continuing guarantee by change in firm
Section 39 : Dissolution of a firm
Section 40 : Dissolution by agreement
Section 41 : Compulsory dissolution
Section 42 : Dissolution on the happening of certain events
Section 43 : Dissolution by notice of partnership at will
Section 44 : Dissolution by Court
Section 45 : Liability for acts of partners done after dissolution
Section 46 : Rights of partners to have business wound up after dissolution
Section 47 : Continuing authority of partners for purpose of winding up
Section 48 : Mode of settlements of accounts
Section 49 : Payment of firm debts and separate debts
Section 50 : Personal profits earned after dissolution
Section 51 : Return of premium
Section 52 : Rights where partnership contract is rescinded for fraud or misrepresentation
Section 53 : Rights to restraint from use of firm name
Section 54 : Agreements in restraint of trade
Section 55 : Sale of goodwill after dissolution
Section 56 : Power to exempt from application of this chapter
Section 57 : Appointment of registrars
Section 58 : Application for registration
Section 59 : Registration
Section 60 : Recording of alterations in firm name
Section 61 : Nothing of closing and opening of branches
Section 62 : Nothing of change in names and addresses of partners
Section 63 : Recording of changes in and dissolution of a firm

[Chapter ⇒ 3 Unit : 1] General Nature of a Partnership ■ 2.297

- Section 64** : Rectifications of mistakes
Section 65 : Amendment of registers by order of Court
Section 66 : Inspection of Register
Section 67 : Grant of copies
Section 68 : Rules of evidence
Section 69 : Effect of non-registration
Section 70 : Reality for furnishing false particulars
Section 71 : Power to make rules
Section 72 : Mode of giving public notice
Section 73 : Repeals
Section 74 : Savings.

SELF STUDY QUESTIONS

Q.1: Define 'Partnership', 'Partner', 'Firm' and 'Firm name' as per of the Indian Partnership Act, 1932?

Answer:

As per Section 4:

- As per **Section 4** "partnership is the relation between person who have agreed to share the profits of a business carried on by all or any of them acting for all".
- Person who enters into partnership with one another are individually called partners and collectively called firm.
- Name under which business is carried on is "Firms Name".
- Firm cannot use the words "limited" in its name.

Q.2: How many Elements of Partnership are there?

Answer:

- It must be a result of an agreement between two or more persons to do a business.
- It is voluntary in nature.
- Agreement must be to share the profits of business.
- Business must be carried on by all or any of them acting for all.

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- All the above essentials must co-exist before any partnership comes into existence.
- Relation of partnership arises from contract and not from status.
- Agreement may be expressed or implied.
- As per Section 2 (b), "Business including every trade, occupation and profession".
- Profit means the excess of return over advances.
- Sharing of profit includes sharing of losses.
- Sharing of profit is *prima facie* evidence of the existence of partnership, this is not the conclusive test of the same.

Q.3: What do you understand by True test of Partnership?

Answer:

- Mutual agency is the basis and most essential thing for partnership.
- Sharing of profit also involves sharing of losses.
- Sharing of profits is not a conclusive test of existence of partnership.
- Even partner is a principal and agent for himself and others.
- Agency relationship is the most important test of partnership.

Q.4: Briefly explain and distinguish between Partnership V/s Joint Stock Company?

Answer:

	Company	Partnership Firm
1.	It comes into existence when it is incorporated under the Companies Act, 2013.	It comes into existence by agreement between the partners.
2.	It has its own identity .	It has no separate identity.
3.	It is managed by directors.	It is managed by partners itself.
4.	Members are not agent of the company or other members.	Every partner is an agent of firm and of the other partners.
5.	Death/insolvency of shareholders do not affect its continuity.	It is closed down in case of death of partner.

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6.	Liability of members is limited.	Liability of partners is unlimited.
7.	Shareholders may transfer his shares subject to provisions of contained in Articles.	Share of partner cannot be transferred without the consent of all partners.
8.	Incase of Private Company. Minimum member – 2 Maximum member – 200 In case of Public Company Minimum member – 7 Maximum member – No limit.	As per Section 464 of Companies Act, 2013, No. of partners in an association cannot exceed 100. As per Companies (Miscellaneous) Rules, 2014 limit is restricted to 50.

Q.5: How many Kinds of Partnership are there?

Answer:

1. Partnership at will:

- Here no provision is made in agreement regarding the duration of partnership.
- Any partner can terminate the agreement anytime by giving the notice.
- Such type of partnership is usually formed for any particular project.

2. Partnership for a fixed period:

- Agreement of partnership contains the provision as to the duration of the partnership.
- At the expiry of specified period, partnership comes to an end.

3. Particular Partnership:

- Partnership agreement formed to carry out a particular business or for a particular period.
- After the completion of business, for which it was constituted, partnership comes to an end.

4. General Partnership:

- Partnership constituted with respect to the business in general.

Q.6: What do you understand by Partnership Deed?

Answer:

- It constitutes the mutual rights and obligations of partners in a written form.
- It is also known as partnership agreement, constitution of partnership or articles of partnership, etc.
- It must be drafted and stamped as per the provisions of the Indian Stamp Act.

Q.7: What are the contents of Partnership?

Answer:

Partnership deed must contain following particulars:

1. Name of partnership firm
2. Particulars of partners
3. Place and nature of business
4. Date of commencement of partnership
5. Duration/Terms and conditions
6. Capital Contribution
7. Profit sharing ratio
8. Rules regarding admission, retirement, etc.
9. Provisions for transactions and settlement of accounts

Q.8: How many Types of Partner?

Answer:

Extent of participation	Sharing of Profits	Liabilities	Nature of Behaviors	Others
- Active	- Nominal	- Limited	- By estoppel	- Secret
- Sleeping	- Partner in profits only	- General	- By holding out	- Silent
				- Incoming
				- Outgoing
				- Sub partner

Q.9: Describe the Active/Actual/Ostensible/Working Partners.

Answer:

- He is not only contributing capital but also takes active part in the conduct of firm's business.
- He shares its profits and losses.
- He had to give public notice of his retirement if he has to free himself from all liabilities.

Q.10: Describe the Sleeping/Dormant Partners.

Answer:

- He only contributes capital and shares profit/loss without taking active part in firm's business.
- He has unlimited liability.
- He can retire from the firm without giving any public notice.
- He is entitled to access books and accounts of the firm, even though he performs no duty.

Q.11: Describe the Nominal/Quasi Partners.

Answer:

- He only lends his name and reputation for the firm's benefit without sharing any profit/loss.
- He is known to outsiders as partner but actually he is not.
- He is liable to third party for all his acts.
- He is required to give public notice on requirements.

Q.12: Which condition Apply on Partner in profits only?

Answer:

- He gets a share in profits but does not share any losses of the firm.
- He has to bear all the liabilities to third party.

Q.13: Describe the Partner by estoppel.

Answer:

- He is not a partner of the firm but conducts himself in such a way which leads third party to believe that he is a partner.
- He is liable for all the debts to such third party.

Q.14: Describe the Partner by holding out.

Answer:

- He is declared by others as a partner of the firm but does not contradict it immediately and remains silent.
- He is liable to third party who is entering into contracts with firm on belief of he being the partner.
- Holding out means 'to reprint'.
- It is based on the doctrine of estoppel of Indian Evidence Act.

Q.15: What do you understand by Incoming Partner?

Answer:

- Person being admitted as a partner in an existing partnership firm.
- He will not be liable for any act of the firm done before date of admission.

Q.16: Describe the Outgoing Partner.

Answer:

- Person leaving the partnership firm.
- He is liable to third party unless he gives a public notice of his retirement sub partner.
- He is a third person with whom a partner shares his profits.
- He has no rights and duties towards the firm.

SHORT PRACTICE QUESTIONS

1. Define Partnership
2. What is Partnership deed
3. Differentiate between –
(a) Partnership and Club
(b) Partnership and Co-ownership
4. Explain briefly kinds of partners.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reason whether the following statement is correct or incorrect:

- (viii) A money lender getting a share in the profits of the firm for the sum lent is a partner in the firm. (2 marks)

Answer:

Incorrect: Sharing of profits is an important condition of partnership but this is not the only test of partnership. According to the explanation II to Section 6 of the Partnership Act, lenders who are given a share in the profits do not automatically become partners of the debtor firm.

1995 - May [1] State with reason whether the following statement is correct or incorrect:

- (viii) Sharing of profits of a business is conclusive evidence of partnership. (2 marks)

Answer:

Correct: Section 19(2) of the Indian Partnership Act, provides that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to enter into partnership on behalf of the firm.

1996 - May [1] State with reason whether the following statement is correct or incorrect:

- (vii) A partner, whether active or dormant, is entitled to have access to any of the books of the firm and take out a copy thereof. (2 marks)

Answer:

Correct: Section 12(d) of the Indian Partnership Act, 1932 states that every partner has a right to have access to and to inspect and copy any of the books of the firm. This right may be exercised by himself or by his agent and it must be bonafide.

1997 - May [1] State with reason whether the following statement is correct or incorrect:

- (ix) Sharing of profits is conclusive evidence of partnership. (2 marks)

Answer:

Incorrect: Although sharing of profit is a *prima facie* evidence of establishment of partnership, it is not a conclusive proof. Existence of an agreement, business and mutual agency are also required along with the sharing of profits for the determination of partnership.

1998 - Nov [1] State with reason whether the following statements are correct or incorrect:

- (vii) Where two persons jointly run a coach and share the profits derived from running such business constitute partnership business?

(2 marks)

- (viii) A partnership may be formed with two partnership firms as partners.

(2 marks)

Answer:

- (vii) **Incorrect:** It is not partnership but co-ownership. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in a property would not by itself make such persons as partners because there is no mutual agency.

- (viii) **Incorrect:** According to Section 4 of the Indian Partnership Act, the term 'person' does not include a firm. This is because a firm is not a separate legal entity. Therefore, two partnership firms cannot enter into partnership.

1999 - Nov [1] State with reason whether the following statement is correct or incorrect:

- (ix) The test of existence of partnership is the element of 'sharing of profits' rather than 'mutual agency'. (2 marks)

Answer:

Incorrect: Sharing of profits is an essential element to constitute a partnership. But it is only a *prima facie* evidence and not conclusive evidence in that regard. Existence of mutual agency, is the cardinal principle of partnership law. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of the firm binds all the partners (Section 6, Indian Partnership Act, 1932).

2002 - Nov [1] State with reason whether the following statement is correct or incorrect:

- (ix) Where two persons jointly run a coach and shares the profits derived from running such business constitute partnership business? (2 marks)

Answer:

Please refer 1998 - Nov [1] (vii) on page no. 304

SHORT NOTES

1994 - Nov [7] Write short note on:

- (d) Sub-partnership.

(4 marks)

Answer:

Sub-partnership: This is a partnership within a main partnership. Where one of the members of a firm, agrees to share the profits received by him with a stranger, there arises what is called a 'sub-partnership' between such third person and the partner. Such a third party is in no sense a partner in the original firm and has no right of recourse against the it. Also, such partners are not counted for the limits of partners in a firm. His rights and liabilities are only referable to the contract with the main partner. A sub-partner is a transferee within the meaning of Section 29 of the Partnership Act (Venkataraman (v) Venkataram (1944)).

1995 - May [7] Write short note on:

- (d) Partnership at will.

(4 marks)

Answer:

Partnership at will: The definition of partnership at will has been given under Section 7 of the Partnership Act, 1932. It lays down that where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "Partnership at will". Accordingly a partnership is deemed to be a partnership at will when:

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- (i) No fixed period has been agreed upon for the duration of partnership, and
- (ii) There is no provision made as to the determination of the partnership in any other way. Such partnership has no fixed date of termination therefore, death or retirement of a partner does not affect the existence of such partnership.

Section 43(1) provides that "where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm". The firm is dissolved from the date of notice or date of communication of the notice.

However, if the freedom to dissolve the firm at will is curtailed by agreement, say, if the agreement provides that the partnership can be dissolved by a mutual consent of all the partners only, it will not constitute a 'partnership at will'.

1995 - Nov [7] Write short note on:

- (d) Doctrine of "Holding Out". (4 marks)

Answer:

Doctrine of "Holding Out": The doctrine of 'holding out' is based on the principle of 'estoppel' which says that where a person by his words or conduct has wilfully led another person to believe that certain set of circumstances or facts exists, and that other person has acted on that belief, then he is estopped from denying the truth of such statements subsequently. The doctrine of holding out also requires certain type of affirmative or positive act on the part of the person being represented.

Thus if a person either by his conduct or statement leads another person to believe that a certain person is his agent, then he is estopped from saying that such a person is not his agent. The idea here is to protect the interests of persons who acted in good faith.

The doctrine of 'holding out' is applicable in the case of partnership also. Section 28 of the Indian Partnership Act imposes liability on such person who is not partner but knowingly by statement, whether oral or written or by conduct makes another person to believe that he is a partner and the another person, in good faith and believing on such statement or conduct enters into a contract or transaction with the firm.

[Chapter → 3 Unit : 1] General Nature of a Partnership ■ 2.307

1996 - May [7] Write short note on:

- (e) Sub-partnership. (4 marks)

Answer:

Please refer 1994 - Nov [7] (d) on page no. 305

1996 - Nov [7] Write short note on:

- (e) Particular partnership. (5 marks)

Answer:

Particular partnership: According to Section 8 of the Indian Partnership Act, 1932, a person may become a partner with another person in particular adventures or undertakings. Thus, where persons enter into an agreement constituting a partnership limited to joint trading adventure, and goods are purchased, ostensibly by an individual adventurer but truly and substantially for the purpose of the joint adventure, the adventurers are liable as partners, but there is no such responsibility for goods purchased before the partnership agreement upon the credit of an individual adventurer, though they are afterwards brought into stock as his contribution to the joint adventure. It need hardly be stated that all the requisites of a partnership must be present before a transaction between two persons limited to a single adventure is held to be a partnership. In this case even a single adventure may constitute a business, as defined under Section 2(b) for the purpose of a partnership business.

Where an adventure becomes illegal, such partnership must be dissolved. [Section 42(b)].

1998 - May [7] Write short note on:

- (e) Partnership at will. (5 marks)

Answer:

Partnership at will: The definition of partnership at will has been given under Section 7 of the Partnership Act, 1932. It lays down that where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "Partnership at will". Accordingly a partnership is deemed to be a partnership at will when:

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- (i) No fixed period has been agreed upon for the duration of partnership, and
- (ii) There is no provision made as to the determination of the partnership in any other way. Such partnership has no fixed date of termination therefore, death or retirement of a partner does not affect the existence of such partnership.

Section 43(1) provides that "where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm". The firm is dissolved from the date of notice or date of communication of the notice.

However, if the freedom to dissolve the firm at will is curtailed by agreement, say, if the agreement provides that the partnership can be dissolved by a mutual consent of all the partners only, it will not constitute a 'partnership at will'.

1999 - May [7] Write short note on:

- (d) Actual partner and sub-partner.

(5 marks)

Answer:

Actual partner and sub-partner: A person who becomes a partner, by an agreement and is actively engaged in the conduct of the business of the partnership is known as the actual partner. He is the agent of the other partner in the ordinary course of the business of the firm. He binds himself and the other partners, so far as third parties are concerned, for all the acts which he does in the ordinary course of the business and in the name of the firm. Whereas when a partner agrees to share his profits derived from the firm with a third person, that third person is known as a sub-partner. A sub-partner is in no way connected with the firm and cannot represent himself as a partner of the firm. He has no rights against the firm nor is he liable for the acts of the firm.

2001 - May [7] Write short note on:

- (d) Partnership at Will.

(5 marks)

Answer:

Please refer 1995 - May [7] (d) on page no. 305

[Chapter → 3 Unit : 1] General Nature of a Partnership ■ 2.309

2001 - Nov [7] Write short note on:

- (e) Partner by estoppel.

(5 marks)

Answer:

Partner by estoppel: Under Section 28 of the Indian Partnership Act, 1932, when a person represents himself or knowingly permits himself to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to any one who on the faith of such representation has given credit to the firm.

It may be noted that where a retiring partner does not give a public notice of his retirement and the continuing partners still use his name as a partner on letter-heads and bills etc., he will be personally liable, on the ground of holding out, to third parties who give credit to the firm on the faith that he is still a partner.

DISTINGUISH BETWEEN

1994 - Nov [6] (b) (ii) Briefly explain the difference between Partnership and a Firm. (5 marks)

Answer:

Difference between Partnership and a Firm: Section 4 of the Indian Partnership Act states "persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'". Thus, a firm is collection of partners while partnership merely an abstract legal relation between the partners. The two apparently seem to be one and the same, but are different in the following sense:

1. Partnership is a relationship which subsists between persons but a firm is a short of entity. So the same relation of partnership exists in all the partnership firms.
2. Partnership is an invisible tie which binds the partners together and the firm is the visible form of those partners who are thus bound together.

1995 - Nov [6] (b) (i) Briefly explain the difference between Partnership and Joint Stock Company. (5 marks)

Answer:

Partnership and Joint Stock Company:

- (a) **Personality:** A firm is not legal entity whereas a company is a juridical person distinct from its members.
- (b) **Agency:** In the case of a firm, every partner is an agent of other partners as well as of the firm but in case of company, members are not agents of the company.
- (c) **Profits:** Profits of a firm is distributed among the partners according to deed of partnership. But in the case of company, distribution of profit is optional as the company may or may not declare dividends.
- (d) **Liability:** In firm, the liability of partners is unlimited but in a company, liability is always limited to the amount of shares or guarantee.
- (e) **Property:** Property of firm is joint estate of all the partners whereas in a company, property belongs to company and not of shareholders.
- (f) **Transfer of share:** In the case of partnership transfer of a partner's right is not possible without the consent of all the partners, though his interest can be assigned to a third party who has a right to share in profits but has no other rights, but in the case of a public company, share are transferable and quoted on stock exchange.
- (g) **Management:** In partnership management is by partners, but in a company, Board of Directors do the management, shareholders only attend in general meetings to vote.
- (h) Number of members in partnership is minimum two and maximum 20 (in banking it is 10) but the case of a private company the minimum is two and maximum 50 excluding past and present employees. And in the case of a public company, it is 7 and no restriction on the maximum.

1996 - May [6] (b) (i) Briefly explain the difference between Partnership and Co-ownership. (5 marks)

Answer:

Partnership and Co-ownership:

1. **Mode of creation:** Partnership is the result of an agreement. Co-ownership may or may not arise from agreement; and it may also arise by status.

2. **Business:** Necessary for partnership. Co-ownership can exist without business.
3. **Nature of Interest:** Partnership involves community of interest whereas co-ownership may not necessarily involve any such interest.
4. **Transfer of interest:** A partner cannot transfer his share to a stranger without the consent of the other partners. A co-owner can.
5. **Number of Members:** In partnership, the number of partners cannot exceed the statutory limit. In co-ownership there is no limit on maximum number.
6. **Authority of Members:** A partner is the agent of his co-partners. A co-owner is not the agent of the other co-owners.
7. **Partition of Property:** A partner can not sue for the partition of partnership property in specific but he can sue his co-partners for the dissolution of the firm and accounts. A co-owner can sue for the partition of the property.
8. **Lien for expenses:** A partner has a lien on the partnership property for expenses incurred by him on such property on behalf of the firm; a co-owner has no such lien.

1996 - Nov [6] (b) (ii) Briefly explain the difference between Partnership and Club. (5 marks)

Answer:

A partnership and a Club: The two can be distinguished as below:

1. **Definition/Meaning:** A club is an association of persons formed with the object not to earn profit, but to promote some beneficial purposes such as improvement of health or providing recreation for the member etc. A partnership on the other hand is an association of persons also, but formed for earning profits from a business carried on by all or any one of them acting for all. These persons share the profit so earned as per their agreement.
2. **Relationship:** Persons forming a club are called members, while persons forming a partnership are called partners. Members of a club are not an agent for the other member's while a partner is an agent for other partners.

3. **Interest in the property:** A member of a club has no interest in the property of the club in the manner a partner has in the property of the firm.
4. **Dissolution:** A member leaving a club shall not affect the existence of the club, while retirement of a partner from the firm does effect the existence of the firm.

1997 - May [6] (b) (ii) Briefly explain the difference between Partnership and an Association. (5 marks)

Answer:

Distinction between a Partnership and an Association: The two terms can be distinguished on the following basis:

- (i) **Meaning:** Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.
An association is a body of persons who have come together for mutual benefit such as resident's association of a particular area or for rendering service to the society such as a charitable or religious society say a dispensary or a temple etc.
- (ii) **Sharing of profits:** A partnership is set up to share the profits of a business, while an association is not set up for sharing the profits. The intention of the association is not to carry on a business by the members of the association for earning profits.
- (iii) **Mutual Agency Trust:** A partnership is based on mutual trust and is carried on by mutual agency, which is not so in the case of an association.
- (iv) **Dissolution:** Retirement or death of a particular may dissolve a firm but retirement or death of a member of an association does not dissolved the association.

1997 - Nov [6] (b) (ii) Briefly explain the difference between Partnership and Joint Stock Company. (5 marks)

Answer:

Please refer 1995 - Nov [6] (b) (i) on page no. 309

1998 - May [6] (b) (ii) Briefly explain the difference between Partnership and Hindu undivided family. (5 marks)

Answer:

Following are the differences between Partnership and Joint Hindu Family:

1. **Creation:** The relation of partnership is created necessarily by an agreement, whereas Joint Hindu Family is established by law. A person becomes a member of a Joint Hindu Family by birth.
2. **Death:** Death of a partner brings about dissolution of partnership. But the death of a member of a Joint Hindu Family does not give rise to dissolution of the family business.
3. **Management:** In a Joint Hindu Family, only karta has the right to manage the business. In partnership, all the partners have the right to take the part in the management of the firm.
4. **Liability:** The liability of partners in a partnership concern is unlimited, joint and several. The liability of members of a Joint Hindu Family except the Karta is limited only to the extent of their share in the business of the family.
5. **Calling for accounts:** On the partition of joint Hindu Family a member is not entitled to ask for the accounts of the family business. But a partner can bring a suit against the firm for accounts on the acquisition of the firm.
6. **Governing Law:** A partnership is governed by the Indian Partnership Act, 1932, while Joint Hindu Family is governed by Hindu Law.
7. **Minor's Position:** A minor can be a member of a Hindu Joint Family, but a minor can not be a partner in a firm. However, he can be admitted to the benefits of partnership with the consent of all the partners.

1998 - Nov [6] (b) (ii) Briefly explain the difference between Sleeping partner and nominal partner. (5 marks)

Answer:

Sleeping Partner and Nominal Partner: A sleeping partner is one who is neither an active partner nor known to outsiders. In reality he is a partner in the firm. He contributes his share of capital and gets his share of profits, but

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he does not take active part in the conduct of the business of the firm. He is liable to the third parties for all the acts of the firm, whether his existence is known to the third parties at the time of making the contract.

A Nominal Partner is one who has no real interest in the business of the firm. He is not entitled to share the profits and also does not contribute any capital. He also does not take part in the conduct of the business of the firm. He lends his name only and his name is used in the firm like an actual partner and is liable for all acts of the firm.

DESCRIPTIVE QUESTIONS

1995 - Nov [2] (d) Sharing in the profits is not conclusive evidence in the creation of partnership. (5 marks)

Answer:

Evidence of Partnership: Partnership, generally, is an agreement (contract) between two or more competent persons to carry on some business and distribute/share the profits of such business.

Section 6 of the Indian Partnership Act prescribes the test to determine the existence of partnership. To determine whether a group of persons is a firm and its members are partners or not, their real relation must be determined on the basis of relevant facts. [Moore v. Daris (1879) 11 Ch. D. 261]. The parties to a partnership contract do not become partners simply on the basis that they have been described, in the deed, as partners. [Abdulla v. Alladia (1927) 8 Lahore, 310].

Sharing in the profits of the firm is a *prima facie* evidence of establishment of partnership but it is not a conclusive proof. As per the provision of Section 4 of the Indian Partnership Act, sharing of profits is not the sole determining fact. Other tests are also required to be applied. [Cox v. Hicman]. A person may, in many ways share in the profits of a business without being a partner. A creditor sharing in the profits does not ipso facto become a partner. Explanation II of Section 6 of the Indian Partnership Act also makes it clear that a creditor is not a partner. Similarly a servant, an agent, widow or child of the deceased partner, may receive a share in the

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profits. But they do not become partner. Thus, the real thing to be seen in such cases is whether they are participating in the business of the firm in the capacity of partners and represent each other in the said capacity. [Malomach & Co. v. Court of Wards (1872) LR 2 CP 419].

1998 - Nov [2] (d) Law of partnership is an extension of law of agency.

(5 marks)

Answer:

Law of partnership is an extension of law of agency: The concluding portion of the definition of partnership as given in Section 4 of the Act is very important for this quotation as it says that the business may be carried on "by all or any of them for all". Thus, it is clear that the Act does require that the business should be carried on by all or it may be carried on by any of them on behalf of all of them. This clearly establishes the implied agency, the partner who is conducting the affairs of the business is considered as agent of the remaining partners. The relationship between partners is governed by the law of agency.

Section 18 of the Partnership Act provided, "Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm".

In carrying on the business of the firm, partners act as agents as well as principals. While the relation between the partners inter se is that of principals, they are agents of one another in relation to third parties for purposes of business of the firm.

Every partner has a two-fold character, he is an agent of the other partners (because other partners are bound by his acts) and also he himself is the principal (because he is bound by the acts of other partners). The liability of one partner for the acts of his co-partners is in truth the liability of a principal for the acts of his agent. This concept of mutual agency is, in fact, the true test of the existence of partnership. This relationship of principal and agent distinguishes a partnership business from co-ownership, Joint Hindu family business as well as an agreement to share profits of the business.

From the above we can conclude that the law of partnership is an extension of the law of principal and agent.

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1998 - Nov [5] (d) Who may be partner of a firm ? (5 marks)

Answer:

Section 4 of the Indian Partnership Act, defines partnership. This definition lays stress on an agreement between persons. These persons should be those, who are competent to contract as per provisions of S. No. 11 of the Indian Contract Act i.e., these persons must have capacity to contract, meaning by they are capable of entering into a valid contract.

Section 11 defines capacity to contract as follows:

"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject." Those who do not have capacity to contract can not be a partner. However, a minor under Section 30 of the Indian Partnership Act can be admitted to the benefits of the partnership firm with the consent of all the partners.

Thus to be a partner, a person must be (1) a major, (2) of sound mind, and (3) should not be disqualified from contracting by any law.

1999 - May [2] (d) True test of partnership is mutual agency. (5 marks)

Answer:

According to Section 4 of the Indian Partnership Act, 1932, three elements of the firm appear from the definition of the partnership. They are - (i) there must be an agreement entered into by all the persons concerned (ii) the agreement must be to share the profits of a business; and (iii) the business must be carried on by all or any of the person concerned, acting for all, All these elements must be present before a group of persons can be held to be partners.

The third element shows that the business must be carried on by the partners or some of them acting for all. This element very clearly brings out the fundamental principle that partners when carrying on the business of the firm are agents as well as principals; an implied agency flows from their relationship with the result that every partner who conducts the business of the firm is in doing so deemed in law to be the agent of all the partners. The essence of a partnership is that each of the partners is the agent of the others for the purpose of carrying on the partnership business. This test is known as the test of mutual agency and is the most distinctive test of

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partnership. Failure by one partner to take part in the management of the business does not have the result that he is not carrying on business as an partner.

Thus sharing the profits of a business though an essential element, would not be in itself sufficient to constitute partnership, Besides sharing the profits of a business it is also necessary to show that the business was conducted on his behalf. Therefore, the true test of partnership is mutual agency rather than sharing profits. If this element is lacking there will be no partnership.

1999 - Nov [6] (b) (ii) Explain Partnership by holding out. (5 marks)

Answer:

Partnership by holding out (Section 28 Indian Partnership Act, 1932):

When a person represents himself or knowingly permits himself to be represented as a partner in a firm when in fact he is not, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm. In the case of partnership by holding out some affirmative conduct by the principal is necessary.

2000 - May [2] (iv) The true test of partnership is "mutual" agency between the partners. (5 marks)

Answer:

The true test of partnership is mutual agency rather than sharing of profits. If this element of mutual agency is absent then there will be no partnership. The prima facie evidence of partnership is mutual agency. Every partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. Section 4 of the Indian Partnership Act, 1932 says is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Thus an implied agency flows from their relationship as partners with the result that every person who conducts the business of the firm is in doing so, deemed in law to be the agent of all the partners. (Section 18).

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2001 - Nov [2] (e) Partnership is an association of persons, who have agreed to share the profits of a business carried on by all or any one of them acting for all. (5 marks)

Answer:

This statement deals with the definition of partnership as laid down by Section 4 of the Indian Partnership Act, 1932. The definition lays down the essential elements which must be fulfilled for making a partnership. Accordingly,

1. There must be an agreement between the persons associating to form a firm.
2. The agreement must be to carry on a business i.e. there must be a business.
3. The agreement must be to share the profits of the business, equally or in agreed proportion.

However, sharing of profits is only a *prima facie* test of partnership since there may be persons who share profits and yet may not be termed as partners e.g. a widow of a deceased partner or a loan creditor getting a share of profits over and above the interest charged by him.

4. The business must be carried in by all or it may be carried by one of them on behalf of all. This element establishes a relationship of mutual agency between the persons known to be partners of the business firm. It is the agency relationship which binds all the partners to each other. Partnership is primarily an extension of the law of agency.

2002 - May [2] (e) True test of partnership is the existence of mutual agency among the partners and not the sharing of profits. (5 marks)

Answer:

True Test of Partnership: In order to determine whether there exists a partnership among the partners, the definition given in Section 4 of the Indian Partnership Act, 1932 is used as a test, i.e. one must look to the agreement between them. If the agreement is to share the profits of a business, and the business is carried on by all or any of them acting for all, there is partnership, otherwise not. In determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

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The difficulty arises when there is no specific agreement constituting partnership among the partners, or the agreement is such as does not specifically speak of partnership. In such a case one has to determine the real relation between the partners as shown by all relevant facts taken together (Section 6) such as written or verbal agreement, real intimation and conduct of the partners, other surrounding circumstances, etc.

The sharing of profits is *prima facie* a powerful evidence of partnership but the fact that there is sharing of profit between some persons will not automatically make them partners. Therefore, receipt by a person of a share of the profits of a business or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business. Thus there is no partnership on the basis of sharing of profits only.

The true test of partnership as laid down in the leading case of Cox vs. Hickman is mutual agency. Each partner carrying on the business is the principal as well as agent of other partners, so the act of one partner done on behalf of the firm binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, it can be said that there is partnership.

2002 - Nov [7] (e) Partner by Holding out. (5 marks)

Answer:

Partner by Holding out: Section 28 of the Indian Partnership Act, 1932 provides for the meaning of the term, 'Partner by Holding Out'. It states:

1. Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to a partner in a firm, is liable as a partner in that firm, to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
2. Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

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Thus, holding out means holding responsible a person who is not a partner in the real sense in a firm, but has represented himself as a partner, or has knowingly permitted himself to be represented, is to be treated to a partner of the firm to any one, who on the faith of such representation has given credit to the firm. He shall also be liable to such creditors for payment.

The representation referred above may be express or implied. It may be written or may be even by conduct. Form of representation is immaterial for such purpose.

2018 - May [6] (b) What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. (4 marks)

Answer:

The business must be carried on by all the partners or by anyone or more of the partner acting for all. This is the cardinal principle of the partnership law. An act of one partner in the course of the business of the firm is in fact an act of all partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Sharing of profits is an essential element to constitute a partnership, but it is only a *prima facie* evidence and not conclusive evidence. **Conclusive evidence of existence of partnership is only mutual agency.**

The receipt of profit share by one person of a business, does not itself make him a partner with the persons carrying on the business. Such cases are:

1. By a servant or agent as remuneration.
2. By a widow or child of a deceased partner, as annuity.
3. By a lender of money to persons engaged or about to engage in any business.
4. By a previous owner or part owner of the business.

2019 - June [3] (b) "Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per The Indian Partnership Act 1932?

(4 marks)

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Answer:

Mode of Determining Existence of Partnership:

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

For determining the existence of partnership, it must be proved:

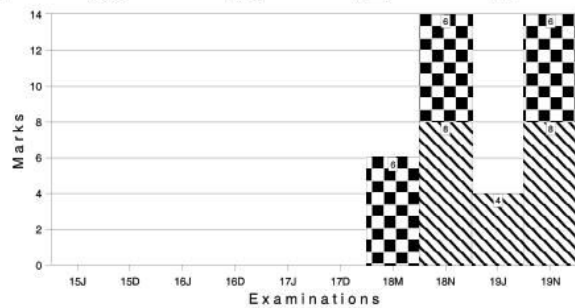
1. There was an agreement between all the persons concerned.
 2. The agreement was to share the profits of a business, and
 3. The business was carried on by all or any of them acting for all.
- 1. Agreement:** Partnership is created by agreement and not by status.
- 2. Sharing of Profits:** Sharing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

CHAPTER	
3	The Indian Partnership Act, 1932
Unit: 2	Relations of Partners

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

Objective Short Notes Distinguish Descriptive Practical



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: What are the Relation of Partners to one another?

Answer:

- It arises through an agreement which provides for the rights and duties of partners.
- If articles are silent, rights and duties are governed by the Act.

Q.2: How many Rights of Partners are there?

Answer:

- To take part in management
- To express opinion
- To inspect and to take out copies of Books of Accounts
- To share profits equally
- To have interest in capital
- To have interest on advances
- Right to be indemnified
- To prevent the introduction of new partner
- Implied Authority
- Right to dissolve
- Profits after retirement or death.

Q.3: What are the Duties and Liabilities of partners?

Answer:

- To carry on the business of the firm to the greatest common advantage
- Being diligent and honest
- Being just and faithful
- To render accounts and information
- To indemnify the firm (Section 10)
- Not to make any secret profits
- Not to hold and use property of the firm.
- Not to start business in competition with the firm.
- Not to receive any remuneration

- Not to transfer his interest
- To act within the scope of his authority
- To share losses.

Q.4: Describe the Partnership Property.

Answer:

As per Section 14:

- It is also known as “**property of the firm**”, “**Partnership assets**”, “**Joint stock**”, “**Joint estate**”.
- It represents the property to which all partners are entitled collectively.

Q.5: What conditions are included in Partnership Property?

Answer:

- (i) All property, rights and interests which partners may have brought into the common stock as their contribution.
- (ii) All property, rights and interests which are acquired or purchased by the firm in the course of business.
- (iii) Goodwill of the business.
 - Every partner is a joint owner of partnership property.
 - Every partner is entitled to hold and apply the same exclusively for business purpose.
 - A partner's property being used for firm's business, does not automatically make it a firm's property.

Q.6: Write short note on Goodwill.

Answer:

- Goodwill is defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal profits.
- It is a partnership property.
- In case of dissolution of firm, every partner has a right according to the deed in the absence of any agreement, to have a share in the goodwill on it being sold.
- It can be sold separately or along with other properties of the firm.

Q.7: Which condition applies in case of personal profit earned by Partners.

Answer:

As per Section 16:

If a partner derives any profits for himself from any business transaction of the firm or from use of the property of the firm or carries on a competing business, he must account for and pay all the profits made by him to the firm.

Q.8: Describe the Relation of partners to third parties.

Answer:

- Every partner is the agent of the firm for the purpose of business of the firm.
- Every partner is both the principal and agent.
- The law of partnership is regarded as the breach of law of agency.

Act of every partner binds the firm and other partners unless:

- (i) Acting partner has no authority to act for the firm in such matter
- (ii) Person with whom he is dealing knows that he has no authority
- (iii) Believes such person to be a partner.

Q.9: Which Conditions Apply for implied authority?

Answer:

- (i) Act must relate to normal business of the firm.
- (ii) Act must be done in the usual way of carrying on the firm's business.
- (iii) Act must be done in the firm's name.

Q.10: Which Acts Apply within implied authority?

Answer:

- To buy, sell and pledge goods on behalf of firm.
- To raise loan on security of such assets.
- To receive payments of debts due to the firm.
- To accept, make and issue bill of exchange, etc on firm's behalf.
- To engage servants for the firm's business.
- To take on lease a premises on firm's behalf.

Q.11: Which Acts Apply beyond the Implied Authority?**Answer:****As per Section 19(2):**

- Submission of dispute relating to business of firm to arbitration.
- Opening a bank account on firm's behalf in his own name.
- Comprising or relinquishing any claim or portion of claim against third party by firm.
- Withdrawing a suit or proceedings filed on behalf of firm.
- Admitting any liability in a suit or proceedings against the firm.
- Transferring immovable property of the firm.
- Entering into partnership on firm's behalf.

Q.12: What are the Extensions and Restrictions of Partners on Implied Authority?**Answer:****As per Section 20:**

- The partners may either extend or restrict the implied authority of any partner by contract between them.
- Third party is not effected by a secret limitation of a partner's implied authority unless he had actual notice of it.
- All partner's consent is required for it.

Q.13: Describe the Partner's authority in an Emergency.**Answer:****As per Section 21:**

Subject to provisions of section 20, each partner binds the firm by all acts done in the case of emergency, with a view to protect the firm from any loss provided, As he has acted as a man of ordinary prudence.

Q.14: Describe the Liability to third parties.**Answer:****As per Sections 25 to 27:****Section 25: Contractual liability:**

Every partner is liable jointly and severally for all acts or omissions binding the firm while he is a partner.

Q.15: What are the Section 26: Liabilities for fort or wrongful Act?**Answer:**

(Generally other partners are not liable for one partners fort but where fort is committed by authority of other partners then partners are liable)

The firm is liable to the same extent as the partner for any loss or injury caused to the third party by wrongful act of partner, if they are done by partner acting:

- (i) in ordinary course of business
- (ii) with partner's authority.

Q.16: Which Liabilities arise for misappropriation by a partner?**Answer:**

- (i) When a partner, acting within his apparent authority, receives money or other property from a third person and mis-applies it, or.
- (ii) where a firm, in business course, received money or property from third party and is misapplied by a partner, while it is in firm's custody in liable to make good the loss.

Q.17: What are the Rights of Transferee of a partner's interest?**Answer:****As per Section 29:**

- During the continuance of partnership if a partner transfers his interest, the transferee will not be entitled to
 - (i) Interfere with the conduct of business
 - (ii) require account, or
 - (iii) inspect books of the firm.

He will only be entitled to share of profits and he is bound to accept the same without challenging the accounts.

- At the time of dissolution or retirement, transferee is entitled, against other remaining partners :
 - (i) to receive the share of assets of the firm to which the transferring partner was entitled, and
 - (ii) for the purpose of ascertaining the share, he is entitled to an account as from the date of dissolution.

Q.18: What are the benefits which arise on admission of a minor partner in a Partnership Firm?

Answer:

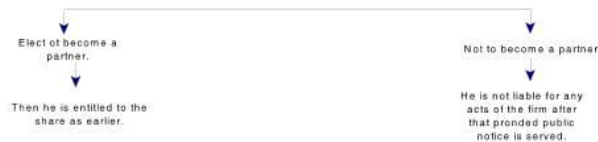
As per Section 30:

- Minor is a person who has not completed 18 years of age, thus, cannot become a partner as he is not competent to contract.
- As per section 30, he can however, be admitted to the benefits of partnership with the mutual consent of all partners. No partnership firm can be formed only with minors.
- A minor's agreement is altogether void
- If a minor has to be admitted into the benefits of partnership, there must be atleast 2 major partners.

Q.19: What are the Rights of Minor?

Answer:

- **Section 30(2):** Share profits of the firm
- **Section 30(2):** Inspect and copy the book of accounts of the firm.
- **Section 30(4):** Can file a suit for accounts and his share in the firm but only when severing his connection with the firm.
- **Section 30 (5):** On attaining majority he may within 6 months either

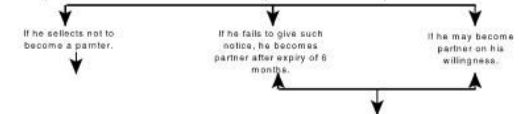


Q.20: What are the Liabilities of a Minor ?

Answer:

- **Section 30(3):** His liability is limited to the extant of his share in the firm.
- **Section 30(3):** He is liable for all acts of the firm but he is not personally liable.

- Within 6 months of his attaining majority or
- On his obtaining knowledge of had been admitted to the benefits of partnership, whichever is later, he may give a public notice of not electing to become a partner.



- After notice, he shall not be liable for any acts of firm.
- Entitled to sue partners for his share in property and profits.
- After attaining majority, the minor becomes personally liable to the third parties.
- Becomes personally liable for all the firm's act to third party since he was admitted to benefits.
- His share in property and profits remains same.

Q.21: What are the Liabilities of an Incoming Partner?

Answer:

As per Section 31(2):

- Liability of new partner ordinarily commences from the date of his admission.
- He can also agree to be liable for obligations incurred prior to that date by the firm.
- New firm constituted, may agree to assume liability from existing debts of old firm.
- Creditors may agree to accept the new firm as their debtor and discharge the old partners.
- Creditors consent is necessary.

Q.22: What are the Agreements which arise between partner's in case or Novation?

Answer:

Novation refers to a tripartite agreement between:

- (i) Firm's creditor
- (ii) Partner existing at the time when debt was incurred.
- (iii) Incoming partner.

Q.23: What are the Liabilities of outgoing or retiring partner?

Answer:

As per Section 32:

- Liability of such partner continues until a public notice of his retirement has been given.
- He remains liable for the firm's acts done before his retirement, unless there is an agreement made.
- He may be discharged by novation.

Q.24: What do you mean by Insolvency of partner?

Answer:

As per Section 34:

- Such a partner ceases to be a partner on the date of the order of adjudication.
- His estate ceases to be liable for any act of the firm done after that date of order.
- Firm is also not liable for any act of such a partner after such date.

Q.25: Write short note on Death of Partner.

Answer:

As per Section 35:

If the firm is not dissolved, the estate of deceased partner is not liable for act of the firm after his death.

Q.26: What are the Rights of Outgoing Partner to Carry on Competing Business?

Answer:

As per Section 36:

- An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not:
 - (a) use the firm name
 - (b) represent himself as carrying on business of firm or
 - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
- Partner may agree to not to carry on similar business within a specified time period or specific local limits and any such agreement will be treated as valid if refrains of restraint are reasonable.

Q.27: What are the Rights of Outgoing Partner in Certain Cases to share subsequent profits?

Answer:

As per Section 37:

The representatives of the deceased partner would be entitled, at their discretion to interest @ 6% p.a. on amount due from the date of death to the date of payment or to that portion of profit which is earned by the firm with the amount due to the deceased partner.

Q.28: What do you understand by Revocation of Continuing guaranty by change in firm?

Answer:

As per Section 38:

- A continuing guarantee given to a firm or to third party;
- In respect of transaction of the firm in the absence of any contrary agreement, "revoked as to future transactions from the date of any change in the constitution of the firm".

SHORT PRACTICE QUESTIONS

1. What do you understand by the term goodwill?
2. Explain partnership Property.
3. Write Short on relation of partners to outsiders.
4. Mention the acts of partners which are beyond the Implied Authority.
5. Can minor be admitted to partnership business?

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) A person can be admitted to a partnership firm with the consent of majority of partners only. (2 marks)

Answer:

Incorrect : A partner can be admitted in a firm only by the consent of all the existing partners. Consent only of the majority of partners would not be sufficient. This is, however, subject to an agreement to the contrary, [Sec. 31 (1)].

1995 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) Implied authority of partner does not include entering into partnership on behalf of the firm. (2 marks)

Answer:

Incorrect : The sharing of profits is *prima facie* a powerful evidence of partnership but the fact that there is sharing of profits between some persons will not automatically make them partners.

1995 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) A major and a minor can create a partnership. (2 marks)

Answer:

Incorrect: According to section 5 read with Section 30 of the Indian Partnership Act, 1932, a minor can be entered into benefits of partnership with unanimous consent of all the partners but he is not competent for creation of partnership. Also, according to Section 11 of the Indian Contract Act, an agreement by or with a minor is void.

1996 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (viii) A partner in a firm has right to receive interest on advances given by him to the firm @ 12% per annum. (2 marks)

Answer:

Incorrect: Section 13 (d) of the Indian Partnership Act, 1932 allows a partner to receive interest on advances given by him to the firm, but the rate of interest on such advances is 6% per annum and not 12% per annum.

1996 - Nov [1] State with reason whether the following statement are Correct or Incorrect.

- (vii) The invalid expulsion of a partner does not give him a right to claim damages.

- (viii) A partnership contract providing that no partner shall carry on any business other than that of the firm, while he is a partner, is void.

(2 marks each)

Answer:

- (vii) **Correct:** The invalid expulsion of a partner, give the aggrieved partner a right to be re-instated but not to claim any damages [Wood Vs. Wood (1874) I.R.L. Ex. 190.] [Section 33 of the Indian Partnership Act, 1932]

- (viii) **Incorrect:** Section 11 Clause (2) of the Indian Partnership Act says that "Notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner". In view of this the contract in question is valid and the statement is incorrect.

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1997 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (x) A partner is not entitled to claim remuneration. (2 marks)

Answer:

Correct: The Indian Partnership Act does not allow any remuneration to any partner, unless and until agreed upon by all the partners of the firm. (Section 13(a) Indian Partnership Act).

1997 - Nov [1] State with reason whether the following statement are Correct or Incorrect.

- (ix) A new partner may be introduced in the firm even by any existing partner of the firm.
(x) The implied authority of a partner empowers him to acquire immovable property on behalf of the firm. (2 marks each)

Answer:

(ix) **Incorrect: Section 31(1) of the Indian Partnership Act** lays down that subject to a contract between the partners and to the provisions regarding minor in a firm, no new partner can be introduced without the consent of all the existing partners.

- (x) **Incorrect: According to Section 19(2)(f)**, if there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to acquire immovable property on behalf of the firm.

1998 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ix) A transferee of a partner's interest in a firm accepts a loan on behalf of the firm, for which the other partner was authorised to do so, invest it in the non-partnership business, without the consent of all the partners. The transferee is empowered to accept the loan. (2 marks)

Answer:

Incorrect: Section 29 of the Partnership Act, 1932 lays down that a transferee of a partner's interest is not entitled, during the continuance of the Partnership to interfere in the conduct of business. Therefore, the acceptance of loan on behalf of the firm by the transferee of a partner's interest is not in his purview and he has no right to do so unless the other partners unanimously, agree thereto.

[Chapter ⇒ 3 Unit : 2] Relations of Partners ■ 2.335

1999 - May [1] State with reason whether the following statements are Correct or Incorrect.

- (vii) A partner who has purchased the goodwill of the firm on the dissolution of partnership firm has right to make use of the firm's name for earning profits.
(viii) All partners are not joint- owners of the property of the firm, unless otherwise provided in the agreement. (2 marks each)

Answer:

(vii) **Correct:** As per the provisions of the Indian Partnership Act, 1932 as contained in Section 50, where any partner has bought the goodwill of the firm on its dissolution, he has the right to use the firm name and earn profits by its use.

(viii) **Incorrect:** Section 14 of the Indian Partnership Act, 1932, states that unless a contrary intention appears, all partners are joint owners of the property of the firm because property acquired with money belonging to the firm are deemed to have been acquired for the firm. If personal property of the partner is used by the firm the partner must show an intention to make it so.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ix) A partner may acquire immovable property on behalf of the firm, in the exercise of his implied authority. (2 marks)

Answer:

Incorrect: Section 19 of the Indian Partnership Act, 1932 says if there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to acquire immovable property on behalf of the firm.

2000 - Nov [1] State with reason whether the following statements are Correct or Incorrect.

- (ix) A partner is not an agent of other partners in a partnership firm.
(x) A minor can be a partner in a partnership firm. (2 marks each)

Answer:

(ix) **Incorrect:** The basis of the partnership is mutual agency, hence a partner is an agent of all other partners.

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(x) A minor does not have capacity to contract, he can not be a partner in a firm. However, he can be admitted to the benefits of the partnership with consent of all the partners.

2001 - May [1] State with reason whither the following statements are Correct or Incorrect.

(ix) The transferee of a partner's interest is entitled to inspect the books of the firm during the continuance of the firm.

(x) Goodwill of the firm cannot be regarded as an asset of the firm. (2 marks each)

Answer:

(ix) **Incorrect:** A transfer by a partner of his interest in the firm does not entitle the transferee, during the continuance of the firm to interfere in the conduct of the business, or to require accounts, or to inspect the books of accounts of the firm [Section 29 (1) of the Indian Partnership Act, 1932].

(x) **Correct: Section 25 of the Indian Partnership Act, 1932** declares that "every partner is liable, jointly with all the partners and also severally, for the acts of the firm done while he is a partner. Liability of the partner is dependent on two things (1) It should be an act of the firm and (2). The act should have been done by the firm while he was a partner.

2001 - Nov [1] State with reason whither the following statements are Correct or Incorrect.

(ix) In a partnership firm where a partner is entitled to get interest on the capital subscribed by him, such interest can be paid to him out of capital of the firm.

(x) A partner carrying on a business, which is similar in nature and competing with that of the firm is bound to pay to the firm, all the profits earned by him, even when there is no such agreement amongst the partners. (2 marks each)

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Answer:

(ix) **Incorrect:** In a partnership firm where a partner is entitled to get interest on his capital subscribed by him in terms of partnership agreement, he can be paid such interest only out of profits of the firm and not out of capital of the firm. (Section 13(c) : Indian Partnership Act, 1932).

(x) **Correct:** According to Section 16(b) of the Indian Partnership Act, 1932, subject to a contract between the partners if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm, all profits made by him in that business.

2002 - May [1] State with reason whither the following statement is Correct or Incorrect.

(x) A partner making advance of money to the firm, beyond the amount of his agreed capital is entitled to interest on such advanced money. (2 marks)

Answer:

Correct: The general rule is that partners are not considered as debtor and creditor among themselves and hence advance made to the firm by a partner cannot be regarded as loan. But clause (d) of Section 13 of the Indian Partnership Act, 1932 lays down that a partner who makes any payment or advance of money to the firm beyond the amount of his agreed capital, is entitled to interest thereon at the rate of six percent per annum, subject to contract between the partners.

SHORT NOTES

1997 - May [7] Write short note on the following:

(e) Liability of an incoming partner. (5 marks)

Answer:

An incoming partner is not liable for any act of the firm done prior to his admission as a partner. This is because the old partners were not the agents of the new partners at the time when they acted. By a mutual agreement, the

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new partners may agree with the old partners to be liable for the past liabilities of the firm. However, the creditors of the firm cannot sue the new partners for their past debts because there is no privity of contract between the creditors and the new partner. Similarly, the acts of the old partner can not be ratified by the new partner because he was not in existence as a principal at the time when acts were done. He is liable for the acts of the old firm only if the new firm assumes the liabilities of the old firm and the creditors accept the new firm as their debtor and discharge the old firm from his liability.

1998 - Nov [7] Write short note on the following:

(d) Right to remuneration of a partner (5 marks)

Answer:

Right to remuneration of partner:

The general rule is: [No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a cause of dealings, in which event the partner will be entitled to remuneration. Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the contained usage of the firm. Similarly, a partner on whom the whole conduct of the business has been cast by reason of the other partner's wilful neglect of the business to which the latter ought to attend, can claim compensation for the undue labor and trouble being imposed upon him] (*Krishnamachiar vs. Sankara saha 91920*).

1999 - Nov [7] Write short note on the following:

(v) Minor in partnership. (5 marks)

Answer:

Minor in Partnership: A minor cannot become a partner, as he is not competent to contract. But if all the partners agree, he can be admitted to the benefits of partnership. Such minor has a right to his agreed share of the profits; he cannot take part in management, and he can have access to inspect and copy the accounts of a firm but not to book of the firm. On attaining majority, he has to elect whether he wants to continue as a partner

[Chapter ➡ 3 Unit : 2] Relations of Partners ■ 2.339

or not within a period of 6 months of his attaining majority. He fails to give such notice he shall become a partner in the firm on the expiry of the said six months. If the minor becomes a partner of his own willingness, his position is as follows:

- (a) His rights and liabilities as a minor will continue upto the date on which he becomes a partner.
- (b) He becomes personally liable to third parties for all acts of the firm done since he was admitted to benefits of partnership.
- (c) His share in the property and profits of the firm remains the same as to which he was entitled as a minor.

2000 - May [7] Write short note on the following:

(v) Explain the duties of a Partner in Partnership. (5 marks)

Answer:

Duties of Partner [Indian Partnership Act, 1932]:

1. To work for the greatest common advantage. [Section 9]
2. To be just and faithful [Section 9]
3. To render true accounts. [Section 9]
4. To give full information. [Section 9]
5. To indemnify for frauds [Section 10]
6. To indemnify for wilful neglect. [Section 13 (f)]
7. To share losses. [Section 13 (b)]
8. To attend diligently without remuneration. [Sections 12 (b) and 13 (a)]
9. To hold and use property of the firm exclusively for the purpose of business. [Section 15]
10. To account for private profits from transactions of firm etc. and from competing business [Section 16]
11. To act within authority.
12. Not to assign his rights [Section 29]
13. To be liable jointly and severally. [Section 25]

DESCRIPTIVE QUESTIONS

1994 - Nov [5] Answer of the following:

(e) When can a partner be expelled? (5 marks)

Answer:

According to the provisions of Section 33 of Indian Partnership Act a partner can not be expelled from a firm by any majority of the partners. As such the law as a central rule gives no power to partners to expel a partner. This rule is subject to certain exceptions.

Exceptions:

- (i) Where it is provided in the Partnership Act.
- (ii) Where it is by an order of the Court, for misconduct etc.
- (iii) Where it is warranted by dissolution of the firm.

However, the expulsion is subject to the following conditions;

- (a) The right to expel a partner is available by an express agreement between the partners.
- (b) The power must have been exercised by a majority of partners in good faith.
- (c) The expelled partner was given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion. (Carmichael vs. Evans 1904).

The position of the expelled partner is same as that of a retiring partner.

1995 - May [2] Comment on the following:

- (d) A partner is an agent of the firm as well as of all the other partners. (5 marks)

Answer:

A partner is an agent of the firm as well as of all the other partners : The concluding portion of the definition of partnership as given in Section 4 of the Partnership Act says that the business may be carried on by all or any of them acting for all. This clearly establishes the implied agency, the partner who is conducting the affairs of business is considered as the agent of the remaining partners.

In carrying on the business of the firm, partners act as agents as well as principals. While the relation between the partners interest is that of principals, they are agents of one another in relation to third parties for the purpose of the business of the firm.

Section 19(1) of the Partnership Act provides that "..... 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." From this it is clear that every partner has the implied authority to bind the firm provided they relate to the business of the firm and are done by him in the name of the firm and in the usual course of the business of the firm.

In partnership every partner has a two-fold character, he is an agent of the other partners (because other partners are bound by his acts) and also he himself is the principal (because he is bound by the acts of other partners). The liability of one partner for the acts of his co-partners is in fact the liability of a principal for the acts of his agent. This concept of mutual agency is, in fact, the true test of existence of partnership.

1995 - May [3] (b) Discuss the rights of a partner in a firm. (10 marks)

Answer:

The mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or implied by a course of dealing. In the absence of any express agreement among partners, their rights and duties are governed by the Partnership Act.

Rights of the partners in partnership firm are discussed hereunder:

- (i) **Participation in management [Section 12 (a)]:** Every partner has a right to take part in the conduct of the business.
- (ii) **Right to be consulted:** Any difference arising in connection with the business may be decided by a majority of the partners and every partner has a right to express his opinion before the matter is decided.
- (iii) **Access to books [Section 12 (d)]:** A partner has a right to have access to and inspect and copy any of the books of the firm.
- (iv) **Sharing of profits [Section 13 (b)]:** Partners are entitled to share equally in the profit earned.

- (v) **Interest on capital [Section 13 (c)]:** A partner is entitled to interest on advance made by him over and above his capital at the rate of 6% per annum. However, where the partnership agreement provides for the payment of interest at a certain rate such interest shall be payable only out of profits if any, earned by the firm.
- (vi) **Making use of Partnership property [Section 15]:** Every partner is entitled to use the property of the firm exclusively for the purpose of the business of the firm.
- (vii) **Indemnification [Section 13 (c)]:** A partner is entitled to be indemnified by the firm in respect of payments made and liabilities incurred by him under certain circumstances.
- (viii) **Agent of the firm [Sections 18 and 19]:** Because of the agency relationship every partner has implied authority to bind the firm by his own act in the conduct of the business of the firm.
- (ix) **Dissolution of the firm [Section 43, 44 and 46]:** A partner is entitled to dissolve the firm under certain conditions. A partner has a right to have the business wound up after dissolution.
- (x) **Authority in emergency [Section 21]:** A partner has authority in an emergency to do all such acts as required for the purpose of protecting the firm from loss.
- (xi) **Retirement [Section 32]:** Every partner has a right to retire from the partnership firm subject to the nature of partnership.
- (xii) **Not to be expelled [Section 33 (1)]:** Every partner has a right to continuance in the partnership. No partner can be expelled except in good faith.
- (xiii) **No new partner to be introduced [Section 31 (1)]:** Every partner has a right to prevent admission of a new partner to the firm.
- (xiv) **Carrying on competing business [Section 36]:** Unless otherwise agreed, an outgoing partner may carry on a business competing with that of the firm and may advertise such business. But he can not use the name and representation of the firm.
- (xv) **Sharing profits by outgoing partner [Section 37]:** An outgoing partner can claim subsequent profits or interest at the rate of 6% p.a. If final accounts have not been settled.

- (xvi) **Share in the partnership property:** On the dissolution of the firm every partner or his representative has a right to have the property applied in the payment of debts and liabilities of the firm and to have surplus distributed among the partners.

1995 - Nov [3] (b) Point out the circumstances where a partner cannot exercise his implied authority. (10 marks)

Answer:

Limitation on Implied Powers of Partners : A partner is deemed to be an agent of the firm so far as the business of the firm is concerned (Section 18 of the Indian Partnership Act). In view of this, acts of a partner which are done for the purpose of running the business in usual way, bind the firm and the authority of a partner to do such acts is known as implied authority [Higgins v. Beucamp (1914) All E.R. 937]. This implied authority is available to every partner of the firm and need not be reduced to writing in the deed of partnership.

The exercise of implied authority must be in accordance with the provisions of Section 19. Section 19 points out that implied authority can be exercised only in relation to those acts which have a direct relation with the business of the firm. Further, the manner in which the authority is exercised must be similar to that which is required for the business to be carried on by the firm.

Further, **Sections 19(2) and 20 of the Indian Partnership Act** impose certain limitations on the implied authority of a partner. In view of these provisions, a partner cannot exercise his implied authority in relation to the following acts:

1. Reference of firm's disputes to arbitration
2. Opening bank account for the firm in his own name
3. To compromise fully or partly in a suit or to abandon any claim
4. To withdrawn proceedings, or part thereof, instituted in the Court on the part of the firm
5. To admit any liability in a proceedings against the firm
6. To acquire immovable property for the firm
7. To transfer immovable property of the firm
8. To participate in any partnership for the firm.

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A partner can do any of the above acts provided he is expressly authorised to do that or the usage or custom of the trade permits them. **For example**, a partner may open a bank account on behalf of the firm in his own name if he is expressly authorised to do so by all the partners of the firm.

Section 20 provides that the implied authority of partner may be decreased or increased through contract. But if such restrictions are imposed on the implied authority of a partner by mutual agreement they will not be binding on third parties dealing with the firm unless they have knowledge of the restrictions.

1995 - Nov [5] Answer the following:

(e) When is the firm liable for the acts of a partner. (5 marks)

Answer:

Liability of the firm: Apart from the liability of the partners in the firm sometimes a firm may also be held liable in the following ways:

- (i) where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the extent as the partner **(Section 26)**.
- (ii) where a partner acting within his apparent authority receives money or property from a third party and misapplies it, or **[Section 27 (1)]**.
- (iii) where a firm in the cause 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 **[Section 27(2)]**.

1996 - May [3] (b) What are the rights and duties of a minor in relation to partnership business ? (10 marks)

Answer:

Rights and Duties of a minor in relation to partnership:

A minor in real terms is not a partner in a partnership firm. His minority is a disqualification for him to become a partner, since an agreement with a minor is *void ab-initio*. But Section 30 of the Indian Partnership Act provides that

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though a minor cannot be a partner in a firm, he with the consent of all the partners for the time being, may be admitted to the benefits of partnership by an agreement executed by his guardian on his behalf with the other partners. Section 30 states that rules, which govern the rights and liabilities of a minor admitted to the benefits of partnership.

These are:

1. A minor has a right to his agreed share of the profits and share of the property of the firm.
2. He has a right to have access to, inspect and copy the accounts of the firm.
3. He can sue the partners for accounts or for payment of his share. But he can exercise this right only when he severs his connection with the firm and not otherwise. The amount of his share in such a case shall be determined as upon a dissolution.
4. The minor is not liable personally to third parties for the debts of the firm, but his liability is limited only upon his share in the partnership assets and profits.
5. The minor is not entitled to take part in the conduct of the business as he has no representative capacity to bind the firm.
6. On attaining majority or on knowing that he had been admitted to the benefits of partnership, whichever date be later, the minor must decide within six months whether he would or would not like to become a partner in the firm. He has to give public notice of his decision. If he does not give public notice, to this effect, he is treated to be a partner in the firm.
7. When a minor elects to remain as a partner, or fails to give public notice of not remaining as a partner in the firm, he comes personally liable to the third parties for all the debts and obligations of the firm with retrospective effect i.e. from the date of his being admitted to the benefits of partnership.
8. Where the minor elects not to be a partner in the firm, his rights and liabilities continue to be those of a minor upto to the date of his giving public notice and shall not be liable for any acts of the firm done after the date of the public notice.

9. If after attaining majority but before electing to become a partner the minor represents or knowingly permits himself to be represented as a partner in the firm, he will be personally liable to the person who has on the faith of such representation granted credit to the firm on the ground of 'holding out'.

1996 - May [5] Answer the following:

- (d) Explain the rights of an outgoing partner. (5 marks)

Answer:

Rights of an Outgoing partner: Under Sections 36 and 37 of the Partnership Act, an outgoing partner enjoys the following rights:

1. An outgoing partner may carry on business competing with that of the firm and he may advertise such business but subject to a contract to the contrary, he cannot use the name of the firm or represent himself as carrying on the business of the firm or solicit customers of the firm he has left. [Section 36 (1)]. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within a specified local limit.
2. On the retirement of a partner he has the right to receive his share of the property of the firm, including goodwill.
3. An out going partner, where the continuing partners carry on the business of the firm with the property of the firm without any final settlement of account, with him, is entitled to claim from the firm such shares of the profits made by the firm, since he ceased to be a partner as attributable to the use of his shares of the property of the firm. In the alternative, he can claim interest at the rate of 6% per annum on the amount of his share in firm's property (Section 37).
4. If by a contract between the partners, an option has been given to the surviving partners to purchase the interest of the out going partner and the option is duly exercised, the out going partner will not be entitled to any further share or the profits.

1996 - Nov [2] Comment on the following:

- (e) Implied authority of a partner can be extended or restricted. (5 marks)

Answer:

Implied authority of partner can be extended or restricted: Section 20 of the Indian Partnership Act authorises the partners of a firm to extend or restrict the implied authority but only by a contract between them. In spite of such restriction if a partner does, on firm's behalf, any act which falls within his implied authority, the firm will be bound unless the person with whom he is dealing is aware of the restriction or does not know or believe the partner to be a partner. Thus, a third party is not affected by such a limitation of a partner's implied authority unless he has actual notice of it. To take an example, A is a partner of a firm. He borrows from B ₹ 1,000 in the name of the firm but in excess of his authority and utilises the same in paying off the debts of the firm. Here, the fact that the firm has contracted debts suggests that it is a trading firm and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority may be restricted by an agreement between him and other partners. Now if B, the lender is unaware of this restriction imposed on A, the firm will be liable to pay the money to B : On the contrary, if B is aware of this restriction, the firm will be absolved of its liability to repay the amount to B.

One important point in this connection is that the restriction or extension of implied authority must be done with the consent of all the partners. Any one partner, or even a majority of the partners, cannot restrict or extend the implied authority.

1996 - Nov [3] (b) What are the rights of transferee of a Partner's Share? (10 marks)

Answer:

Rights of transferee of a Partner's Share: No person can be introduced as a partner in a firm without the consent of all the partners. Therefore, a partner cannot by transferring his own interest make anyone else a partner in his stead with his co-partners if they do not agree. According to Section 29 of the Partnership Act, 1932, a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of a transferee are:

1. **During the continuance of partnership:** He is entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners i.e. he cannot challenge the accounts.
2. (a) On dissolution of the firm or on retirement of the transferring partner he is entitled to receive the share of the assets of the firm to which the transferring partner was entitled and
(b) for the purpose of ascertaining the share to an account as from the date of dissolution.

The Supreme Court has held that the assignee will enjoy only the rights to receive the share of the profits of the assignor and account of profits agreed to by other partners [Narayanappa Vs. Krishnappa (1966) 2 M.L.J. S.C. 60].

1997 - May [2] Comment on the following:

- (e) "The relationship of arises from an agreement and not from status."
(5 marks)

Answer:

A partnership is the result of a contract and cannot arise by status is sufficiently emphasised by Section 4 of the Indian Partnership Act itself by use of word "partnership is the relation between the persons who have agreed to share the profits of a business". It is clear from the definition that the partnership is of contractual nature. It springs from an agreement. The same point is further stressed by the opening words of Section 5 that the relation of partnership arises from contract and not from status.

Unlike in the case of sole proprietorship and joint Hindu Family business, the legal heirs do not automatically become partners on the death of a partner. A fresh agreement will have to be made.

Thus from the above it is clear that partnership always arises out of a contract and not from status.

1997 - May [5] Answer in brief the following:

- (d) What is meant by the term, 'property of a partnership firm'?
(5 marks)

Answer:

Normally, the partners by an agreement are free to determine as to what shall be the property of the firm and what shall be treated as a separate property of one or more of the partners. But when there is no such agreement and in order to know whether a certain property is the property of the firm or not it has to be ascertained from the source from which the property has been acquired the purpose for which it was acquired, and the manner in which it has been dealt with. According to Section 14 of the Partnership Act, when there is no contract to the contrary, the property of the firm includes:

- (i) All properties, rights and interests originally bring to the stock of the firm.
- (ii) The property acquired by purchase or otherwise by or for the firm.
- (iii) The property acquired with the money belonging to the firm.
- (iv) The goodwill of the business of the firm.

However, if a partner's property is used for the purchase of the business of the firm, it does not automatically become the property of the firm. It can become to property of the firm if the partners have an intention to manage it so. **For example**, a piece of land which has bought in the name of one partner but is paid for any the firm shall be deemed to be the property of the firm unless there is an intention to the contrary.

1997 - Nov [2] Comment on the following:

- (e) Notice to an acting partner is the notice to the firm. (5 marks)

Answer:**Notice to an acting partner:**

Section 24 of the Partnership Act, 1932 lays down that the notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

The rule embodied in this section is an instance of the application of the general principals of agency to partnership. Accordingly, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice and not to an agent is notice to his principal. This notice must be actual and not constructive. It must be received by a working partner and not by a

dormant or sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm. Notice to a clerk or agent of the firm operates as notice to the firm.

But the provisions of this section would not lie in the case of fraud, whether active or tacit. Thus the knowledge of a partner as to a particular defect in the goods which he is buying for the firm will be knowledge of the firm, although the other partners are, in fact, not aware of the defect. The only exception is in the case of fraud. If, therefore, the purchasing partner, in collusion with seller, has conspired to conceal the existence of the defect from the other partners, the rule will not operate and the other partners would be entitled on the defect being discovered by them, to reject the goods.

1997 - Nov [5] Answer the following:

- (e) What are the rights and duties of a partner after a change in the constitution of the firm? (5 marks)

Answer:

Rights and duties of a partners after a change in the constitution of the firm (Section 17):

A change in the constitution of the firm may be in one of the four ways, namely:

- (i) Where a new partner or partners come in;
- (ii) Where one partner or partners go out;
- (iii) Where the partnership concerned carries on business other than the business of the firm;
- (iv) Where the partnership business is carried on after the expiry of the term fixed for the purpose.

This section lays down the following provisions as regards to rights and duties after the change in the constitution of the firm:

- (a) Change in the constitution of the firm:** Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be.

- (b) Business continued after expiration of the term:** Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of Partnership at will; and

- (c) In case of additional undertaking:** Where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings. But the above provisions are however subject to the contract between the partners.

1998 - May [2] Comment on the following;

- (e) "The power to expel partner must be exercised in good faith".

(2 marks)

Answer:

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

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these considerations are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under section 33(1) includes three things:

- (a) that the expulsion must be in the interest of the partnership.
- (b) that the partner to be expelled is served with a notice.
- (c) that he is given an opportunity of being heard. If a partner is otherwise expelled, the expulsion is null and void. The only remedy, when a partner misconducts in the business of the firm is to seek judicial dissolution.

The provisions of Section 32 regarding retirement of a partner are also apply to an expelled partner as if he was a retired partner [Section 22(2)].

1998 - May [4] (a) What are the mutual duties of partners in a partnership firm to regulate the relations between the partners ? (10 marks)

Answer:

Duties of Partners: Following duties should be observed by the partners to regulate the relations between the partners:

- (i) **To observe good faith:** A partnership contract is a contract of absolute good faith and therefore Section 3 of the Partnership Act, 1932 lays down that partners are bound (a) to carry on the business of the firm to the greatest common advantage; (b) to be just and faithful to each other and (c) to render to any partner or his legal representative a true account and full information of all things affecting the firm.
- (ii) **To attend to his duties diligently [Sections 12(b) and 13 (a)]:** Every partner is bound to attend diligently to his duties in conducting the business of the firm. He has no right to receive any remuneration for taking part in the conduct of the business.
- (iii) **To indemnify for fraud (Section 10):** A partner shall be held liable to make good any loss caused to the firm by his fraud in the conduct of the business. It is an absolute provision and is not subject to the terms of the contract between the partners. A clause in the deed of partnership exempting a particular partner from liability to the firm for loss caused by his fraud shall be invalid and unenforceable.
- (iv) **To indemnify for willful Neglect [Section 13 (f)]:** Every partner is liable to the firm for any loss caused to it by his willful neglect in the conduct of the business. The partners can contract themselves out of this liability except in case of fraud.
- (v) **To share losses [Section 13(b)]:** Each partner is liable to contribute for firm's losses equally in the absence of any contract to the contrary.
- (vi) **To hold and use property for the firm (Section 13):** The property of the firm is the property of all the partners, and therefore, each partner should hold and use property of the firm exclusively for the purposes of the firm.

- (vii) **To account for private profits [Section 16 (a)]:** A partner shall be liable to account for and pay to the firm any private profits derived from the transactions of the firm or from the use of the property or goodwill of the firm.
- (viii) **To account for the profits of a competing business [Section 16 (b)]:** If a partner carries on business of the same nature as and competing with that of the firm, then he must account for and pay to the firm all profits made by him in the business. The firm will not be liable for any loss.
- (ix) **To act within authority:** A partner is bound to act within the scope of his actual or apparent authority. In case, he exceeds his authority and the other partners do not ratify his unauthorised acts, he will be liable to the other partners for the loss that they may suffer on account of his such acts.
- (x) **Not to assign his rights (Section 29):** A partner cannot assign his rights or interest in a partnership firm to an outsider, so as to make the outsider a partner in the firm's business without the consent of other partners. In case such an assignment has been made the assignee cannot during the continuance of the firm, interfere in the conduct of the business, or require accounts or inspect the books of the firm. The transferee will be only entitled to receive the share of profits of the transferring partner, and the transferee shall accept the accounts of profits agreed to by the partners.
- (xi) **To be liable jointly and severally (Section 25):** Every partner is liable, jointly with all the other partners and also severally for all the acts of the firm done while he is a partner. A retired partner continues to be liable for the debts of the firm incurred till he gives public notice of his retirement.
- (xii) **Duties after a change in the firm (Section 17):** Rights and duties of the partners of a firm, unless otherwise agreed upon shall remain the same as they were in the beginning even after a change in the constitution of the firm or on the expiry of the term of the firm or even when the firm has taken up additional ventures after the complete of the work for which the firm was constituted.

1999 - May [4] (a) Explain clearly the meaning of implied authority of a partner in a partnership firm. State the matters for which a partner does not have implied authority. (10 marks)

Answer:

Meaning of Implied Authority of a Partner: The authority of a partner means the capacity of a partner to bind the firm by his act. This authority may be express or implied. Where the authority to a partner to act is expressly conferred by an agreement, it is called express authority. But where there is no partnership agreement or where the agreement is silent, 'the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, bind the firm'. [Section 19(1) Indian Partnership Act, 1932].

The authority of a partner to bind the firm by his acts is called implied authority. It is subject to the following conditions:

1. The act done by the partner must relate to the normal business of the firm.
2. The act must be such as is done within the scope of the business of the firm in the usual way.
3. The act must be done in the name of the firm, or in any other manner expressing or implying an intention to bind the firm (Section 22).

Matters for which no Implied Authority is available to a Partner:

1. To submit a dispute relating to the business of the firm to arbitration.
2. To open a bank account on behalf of the firm in his own name.
3. Compromise or relinquish any claim or portion of a claim by the firm.
4. Withdraw a suit or proceeding filed on behalf of the firm.
5. Admit any liability in a audit or proceeding against the firm.
6. Acquire immovable property on behalf of the firm.
7. Transfer immovable property belonging to the firm, or
8. Enter into partnership on behalf of the firm (Section 19(2)).

1999 - May [5] Answer the following:

- (d) Describe the position of a minor, who has been admitted to the benefits of partnership, on attaining majority. (5 marks)

Answer:

Position of a Minor in Partnership: Under Section 11 of the Indian Contract Act, 1872, a minor's agreement is void. In view of this a minor and a major cannot enter into an agreement of partnership. Thus, a person who is minor may not be a partner in a firm but under Section 30 of the Indian Partnership Act, 1932, he may be admitted to the benefits of partnership with the consent of all the partners for the time being.

Section 30 of the Indian Partnership Act provides that the minor who has been admitted to the benefits of partnership, has to decide whether he shall remain a partner or shall leave the firm and this decision is to be taken by him within six months of his attaining majority, or his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later. If he decides to sever his connection with the firm, he must give a public notice of his such intention. If he does not give such public notice, it must be presumed that he has opted to become a partner in the firm.

If the minor becomes a partner of his own willingness or by his failure to give the public notice within specified time, his rights and liabilities are as follows:

1. he becomes personally liable to third parties for all acts of the firm done from the date when he was admitted to the benefits of the firm.
2. his share in the property and the profits of the firm remains the same to which he was entitled as a minor.

If the minor decides to sever his connection with the firm, his rights and liabilities shall be as follows:

- (i) His rights and liabilities continue to those of a minor up to the date of giving public notice.
- (ii) His share shall not be liable for any acts of the firm done after the date of the notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits.

2000 - May [5] Explain the following:

- (iv) Explain the position of a person who had been admitted to the benefits of partnership as a minor, after attaining majority. (5 marks)

Answer:

Position of a minor in partnership after attaining majority: Partnership is a relation resulting from a contract, and a minor's agreement is altogether void. A minor, being incompetent to contract, cannot become a partner. But he can be admitted to the benefits of an already existing partnership, if all the partners agree to admit him. Such a minor is not personally liable nor his separate property and profits will be liable.

Within six months of his attaining majority or when he comes to know of his being so admitted, whichever date is later, he has to elect whether he wants to continue his relation and become a full fledged partner or sever his connection with the firm. He may give a public notice of his election to continue or discontinue, but if he fails to give any public notice within this period, he will be deemed to have elected to become a partner in the firm. A minor who thus becomes a partner, will become personally liable for all debts and obligations of the firm incurred since the date of his admission to the benefits of the partnership.

2000 - Nov [2] Briefly answer of the following:

- (e) Transferee of a partner's interest cannot exercise the rights of the transferring partner. (5 marks)

Answer:

Section 29 of the Indian Partnership Act, 1932, states the rights of transferee of a partner's share. A share in a partnership is transferable like any other property, but as the partnership relation is based upon mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner. The Supreme Court in Narayanappa v. Krishnappa has held that the assignee will enjoy only the rights to receive the share of the profits of the assignor and account of profits agreed to by other partners.

The rights of such a transferee are:

- During the continuance of partnership, such transferee is not entitled to:
 - interfere with the conduct of the business;
 - require accounts or
 - inspect books of the firm.

- He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e. he cannot challenge the accounts.
- On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - for the purpose of ascertaining the share, to an account as from the date of the dissolution.
- Thus, transferee of a partner's interest cannot exercise the rights of the transferring partner.

2000 - Nov [3] (b) Discuss the rights of a Partner in a Partnership Firm. (10 marks)

Answer:**Discuss the rights of a Partner in a Partnership Firm:**

Where there is no specific agreement or where the agreement is silent on a certain, the relations of partners to one another as regards their rights are governed by the provisions of the Indian Partnership Act, 1932 as contained in **Sections 9 to 17**.

These are:

- Right to take part in business:** Subject to any contract between the partners, every partner has right to take part in conduct of the business of the firm. [**Section 12 (a)**]
- Right to be consulted:** Every partner has an inherent right to be consulted in all matters affecting the business of the partnership before any decision is taken by the partners. Where there is any difference of opinion among the partners as to ordinary matters connected with the business, it may be settled, subject to contract between the partners, by a majority of the partners. [**Section 12 (c)**]
- Right of access to account:** Subject to contract between the partners, every partner has a right to have access to and inspect and copy any of the books of the firm. [**Section 12 (d)**].

4. **Right to share in profit:** In the absence of any agreement, the partners are entitled to share equally in the profits earned and are liable to contribute equally to the losses sustained by the firm. [Section 13 (b)]
5. **Right to interest on capital:** The partnership may contain a clause as to the right of the partners to claim interest on capital at a certain rate. Such interest, subject to contract between the partners, is payable only out of profits, if any, earned by the firm. [Section 13 (c)]
6. **Right to interest on advances:** Where a partners makes, for the purposes of the business of the firm any advance beyond the amount of capital, he is entitled to interest on each advance at the rate of 6 percent per annum. [Section 13 (d)]
7. **Right to be indemnified:** Where a partner incurs any liability in the ordinary course of the partnership business, or in an emergency, for the purpose of protecting the firm from loss, the firm must indemnify such partner. [Sections 13 (e) and 21]
8. **Right to the use of partnership property:** Subject to contract between the partners, the property of the firm must be held and used by the partners exclusively for the purposes of the business of the firm. No partner has s right to treat it as his individual property. [Section 15]
9. **Right of partner as agent of the firm:** Every partner for the purposes of the business of the firm is the agent of the firm. And subject to the provisions of the Indian Partnership 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. [Sections 18 and 19]
10. **No new partner to be introduced:** Every partner has a right to prevent the introduction of new partner unless the consents to that or unless there is an expression them in the contract permitted such introduction [Section 31 (1)]
11. **No liability before joining:** A person who is introduced as a partner into the firm is not liable for any act of the firm done before he became a partner [Section 31 (2)]

12. **Right to retire:** A partner has a right to retire with the consent of all the other partners, or in accordance with an expression agreement between the partners, or where the partnership is at will, by giving notice to all the other partners of his intention to retire. [Section 32 (1)].
13. **Right not to be expelled:** A partner has a right not to be expelled from the firm by any majority of the partners, save in the exercise; in good faith of powers conferred by the contract between the partners. [Section 33 (1)]
14. An outgoing partner can claim subsequent profits or interest @6% per annum till final accounts are settled.

2000 - Nov [5] Briefly answer of the following:

(e) What are the liabilities of an outgoing Partners ? (5 marks)

Answer:

An outgoing partner or a retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the letter deals with the firm without knowing that the former was a partner. [Sections 32 (3) and (4) Indian Partnership Act, 1932].

The liability of a retired/outgoing partner to the third parties continues until a public notice of his retirement has been given. Regarding his liability for the acts of the firm done before his retirement, he remains liable for the same, unless there is an agreement made by him with the third party concerned and the partners of the reconstituted firm. Such an agreement may be implied by course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement [Section 32(2)]

2001 - May [2] Briefly answer of the following:

(e) Relationship in a partnership firm arises from contract and not from status. (5 marks)

Answer:

Please refer 1997 - May [2] (e) on page no. 348

2001 - May [5] Briefly answer of the following:

- (e) What are the legal provisions relating to expulsion of a partner under the Indian Partnership Act ? (5 marks)

Answer:

According to Section 33 of the Indian Partnership Act, 1932 a partner may be expelled from partnership subject to the following three conditions:

- (i) the power of expulsion of a partner should be conferred by the contract between the partners.
- (ii) the power should be exercised by a majority of the partners.
- (iii) the power should be exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in the bonafide interest of the business of the firm.

The test of good faith is:

- (a) that the expulsion must be in the interest the partnership.
- (b) that the partner to be expelled is served with a notice.
- (c) that he is given an opportunity of being heard.

Irregular expulsion: Where the expulsion of a partner takes place without the satisfaction of the conditions given above, the expulsion is irregular. The expelled partner may in such a case either (i) claim reimbursement as a partner or (ii) sue for the refund of his share of capital and profits in the firm. An irregular expulsion is wholly ineffectual and inoperative. The expelled partner, in such a case, does not cease to be a partner.

Regular expulsion: Where a partner is expelled subject to the satisfaction of the conditions as above, his expulsion would be regular.

The rights and liabilities of an expelled partner are the same as those of a retiring partner [Section 33 (2)].

2001 - Nov [5] Answer the following:

- (e) What constitutes Partnership property or Property of the firm? (5 marks)

Answer:

Partnership property consists of the following:

1. All property and rights and interests in property originally brought into the stock of the firm or acquired by purchase or otherwise, by or for the firm, or for the purpose and in the course of the business of the firm; and includes also the goodwill of the business. (Section 14).

2. The property and rights and interests on property acquired with many belonging to the firm and deemed to have been acquired for the firm. (Section 14).
3. The property of the firm held and used by the partners exclusively for the purpose of the firm's business. (Section 15 Indian Partnership Act, 1832).

2002 - May [4] (a) Explain clearly the meaning of the term "Authority of a partner". State the acts which fall within the 'Implied Authority' of a partner. (10 marks)

Answer:

Meaning: The Authority of a partner means the capacity of a partner to bind the firm by his acts. This authority may be express or implied. Where the authority to a partner to act is expressly conferred by an agreement, it is called express authority.

But where there is no partnership agreement or where the agreement is silent, the authority conferred on a partner by the provision is silent, the authority conferred on a partner by the provisions of Section 19 of the Indian Partnership Act is called implied authority.

Implied authority covers those acts of partners which fulfill the following conditions:

1. The act done by the partner must relate to the normal business of the firm. [Section 19(i)]
2. The act must be such as is done within the scope of the business of the firm in the usual way.
3. The act must be done in the name of the firm, or in any other manner expressing or implying an intention to bind the firm. (Section 22).

Acts falling within the implied authority of a partner: In a trading firm, i.e., a firm which depends for its existence on the buying and selling of goods, the implied authority of a partner has been held to include.

1. Purchasing goods, on behalf of the firm, in which the firm deals or which are employed in the firm's business.
2. Selling goods of the firm.
3. Receiving payment of the debt due to the firm and giving receipts for them.

4. Settling accounts with the persons dealing with the firm.
5. Engaging servants for the partnership business.
6. Borrowing money on the credit of the firm.
7. Drawing, accepting, indorsing bills and other negotiable instruments in the name of the firm.
8. Pledging any goods of the firm for the purpose of borrowing money.
9. Employing a solicitor to defend an action against the firm for goods supplied.

2002 - May [5] Briefly answer the following:

- (e) What is the position of a minor in a partnership firm before his attaining the age of majority. (5 marks)

Answer:

The position of a minor in a partnership before attaining the age of majority (Indian Partnership Act, 1932):

Rights:

1. A minor has a right to such share of the property and of profits of the firm as may have been agreed upon.
2. He has a right to have access to and inspect and copy any of the accounts, but not books of the firm. [Section 30(2)].
3. When he is not given his due share of profit, he has a right to file a suit for his share of the property of the firm. But he can do so only if he wants to sever his connection with the firm. [Section 30(4)].

Liabilities:

1. The liability of a minor partner is confined only to the extent of his share in the profits and property of the firm. Over and above this, he either personally liable nor his private estate liable. [Section 30(3)].
2. A minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver or Official Assignee.

2002 - Nov [2] Briefly answer of the following:

- (d) The liability of a retired partner to third parties continuing after his retirement. (5 marks)

Answer:

Goods forming subject matter of the contract of sale may be classified as under:

- I. Existing Goods
 - (a) Specific goods
 - (b) Unascertained goods.
 - (c) Ascertained goods.
- II. Future Goods
- III. Contingent Goods.

Existing Goods are those goods which are in actual existence at the time of contract of sale.

The seller is the owner of goods or he has the possession of such goods.

Existing goods may be of the following three types:

- (i) **Specific goods:** Goods which have either been identified and agreed by the parties at the time of contract of sale.
- (ii) **Unascertained goods:** are those not specifically identified at the time of contract of sale. They are described by the description or sample only.
- (iii) **Ascertained goods:** are those identified only after the formation of a contract of sale. When unascertained goods are identified and agreed upon by the parties, the goods are called Ascertained goods.
- (iv) **Future goods:** are those in existence at the time of contract of sale. These goods are to be acquired or produced by the seller after the contract of sale is made. It is an agreement to sell and not sale.
- (v) **Contingent goods** are like future goods. The acquisition of the goods by the seller depends upon the uncertain contingencies which may or may not happen. e.g. goods will be supplied if ship arrives.

2002 - Nov [6] (b) Subject to an agreement between the Partnership, state the rights of Partners. (10 marks)

Answer:

Please refer 1995 - May [3] (b) on page no.341

2018 - Nov [3] (a) "Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

- (I) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. (4 marks)
- (II) A. State the liabilities of a minor partner both:
- Before attaining majority and
 - After attaining majority. (2 marks)

OR

- B. State the legal position of a minor partner after attaining majority:
- When he opts to become a partner of the same firm.
 - When he decide not to become a partner. (2 marks)

Answer:

(I) The rights enjoyed by a minor partner are:

- A minor partner has a right to his agreed share of the profits and of the firm.
- He can have access to, inspect and copy the accounts of the firm.
- He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm and not otherwise.
- On attaining majority he may within 6 months elect become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(II) The liabilities of a minor partner:

- 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.
 - Minor cannot be declared insolvent but if the firm is declared insolvent his share in the firm vests in the official Receiver/Assignee.

- After attaining majority:

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

OR

(II) The legal position of a minor partner after attaining majority:

- When he opts to become a partner of the same firm. If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in section 30(7) are as follows:
 - He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
 - His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
- When he does not become a partner:
 - His rights and liabilities continue to be those of a minor upto the date of giving public notice.
 - His share shall not be liable for any acts of the firm done after the date of the notice.
- He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the registrar that he has or has not become a partner.

2019 - June [3] (a) (i) What is the provision related to the effect of notice to an acting partner of the firm as per Indian Partnership Act 1932? (2 marks)

Answer:

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

2019 - June [3] (Or) (a) (ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act 1932? (2 marks)

Answer:

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

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

2019 - Nov [3] (a) (i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? (2 marks)

Answer:

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

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

2019 - Nov [3] (Or) (a) (ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? (2 marks)

Answer:

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

2019 - Nov [3] (b) With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner. (4 marks)

Answer:

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

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
5. Ordinarily, the insolvency of a partner, would result in dissolution of firm but remaining partners may agree to carry it on.

PRACTICAL QUESTIONS

2018 - May [4] (b) 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? (6 marks)

Answer:

A partner may not be expelled from a firm by any majority of the partners, except in exercise of good faith of power conferred by contract between the partners. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required includes three things:

- (a) The expulsion must be in the interest of the partnership.
- (b) The partner to be expelled is served with a notice.
- (c) He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

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Having regard to above we can say that expulsion of partner 'Y' by X & Z is not in accordance with the provision of Indian Contract Act and thus not valid.

2018 - Nov [4] (b) (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 ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. (3 marks)

Answer:

According to the facts of this case the situation existent clearly indicates the application of Section 37 of the Indian Partnership Act, 1932 according to which where any member of a firm has died or otherwise ceased to be partner and the surviving or continuing partners carry on the business of the firm without any final settlement of the accounts as between them and the outgoing partner of his estate, then in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

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In this case since there has been no decisive settlement of accounts between the heirs of Mr. C and Mr. A & Mr. B so it's pretty clear that the interest of the heirs of Mr. C is still existent in the profits and property of the firm and Mr. X wants to recover the amount not only from M/s ABC & Co. but also from the legal heirs of Mr. C he is justified in claiming such a recovery and his claim is legal and just according to the provisions of Section 37.

2018 - Nov [4] (b) (ii) 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.

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. (3 marks)

Answer:

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

2019 - Nov [4] (b) 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.

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In the light of the Indian Partnership Act, 1932, explain.

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X? (6 marks)

Answer:

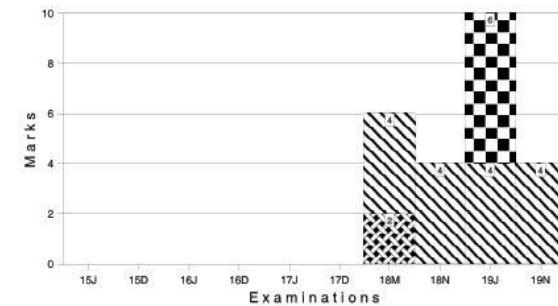
A minor who is admitted to the benefits of a partnership firm during his minority, must within six months of his attaining the age of majority or when he comes to know of his being so admitted (whichever date is later) he has to elect whether he wants to become a partner, or sever his connection with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

In the given case.

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

CHAPTER	The Indian Partnership Act, 1932
3	
Unit: 3 Registration and Dissolution of Firm	

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



For detailed analysis Login at www.scannerclasses.com for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: What are the Steps Adopt on Registration of Firm?

Answer:

- **Registration of firm is effected:**
 - (i) by sending post, or
 - (ii) by delivering a statement in prescribed form to the registrar of the area, in which any place of business of firm is situated or proposed to be situated.
- **Statement must include:**
 - (i) Firm's name
 - (ii) Principal Place of Business
 - (iii) Other Places of Business
 - (iv) Date of joining of each partner
 - (v) Partner's full name and addresses
 - (vi) Firm's duration.
- Statement should be signed by all the partners
- Registrar on being satisfied, shall record this entry in his register of firms and shall file the statement
- Registrar then issues a certificate of Registration
- An unregistered firm is not an illegal association.

Q.2: How Many Consequences of Non-Registration?

Answer:

As per Section 69:

- Indian Partnership Act does not make registration of Partnership compulsory nor does it impose any penalty.
- **However, non-registration give rise to certain disabilities such as:**
 - (i) Firm or any person on its behalf cannot bring action against third party for breach of contract, unless firm is registered and persons seeing are shown in register of firms.

- (ii) Neither firm nor any partner can claim set off if any suit is brought by third party against the firm.
- (iii) Partner of unregistered firm cannot bring any action against the firm or any partner of such firm.
- (iv) Unregistered firm however can bring a suit for enforcing the right arising otherwise than out of contract.

Q.3: How to Suits allowed by Act?

Answer:

- Dissolution of a firm
- Rendering accounts of a dissolved firm
- Realisation of property of a dissolved firm
- Set off values not exceeding ₹ 100
- Proceeding arising incidentally of value not exceeding ₹ 100
- Firm not having business place in territories to which this act extends
- Realisation of property of insolvent partner
- Firm having business place in areas exempted from the application of Chapter VIII of the Indian Partnership Act, 1932.

Q.4: What are the Condition Apply on Dissolution of Firm?

Answer:

As per Section 39-47

- It takes place when relationship between all the partners of the firm is so broken so as to close the business of the firm.
- As a result, firm's assets are sold and its liabilities are paid off.

Q.5: Distinguish between Dissolution of firm and Dissolution of partnership.

Answer:

	Dissolution of Partnership	Dissolution of Firm
1.	It occurs when new partner is admitted or an old partner retires or dies.	It occurs by the mutual consent of partners or by court.

2.	It does not effect the business continuation.	It involves dis-continuation of the business in partnership.
3.	It may or may not be involved in the dissolution of the firm.	It necessarily involves dissolution of partnership.

Q.6: How Many Modes of Dissolution of Firm ?**Answer:**

- **Section 40** – Result of an agreement between all partners.
- **Section 41 (a)** – By adjudication of all partners, or declaration of all partners as insolvent except one.
- **Section 41 (b)** – By firm's business becoming unlawful. Subject to agreement between parties, on happening of certain contingent events.
- **Section 42 (a)** – By expiry of fixed term for which the partnership was formed.
- **Section 42 (b)** – By completion of venture.
- **Section 42 (c)** – By death of partner.
- **Section 42 (d)** – By insolvency of a partner.
- **Section 42 (e)** – By retirement of a partner.
- **Section 43** – In case of partnership at will, by a partner giving notice of his intention to dissolve the firm. Firm dissolves from the date mentioned in the notice. If no date is mentioned, then from date of communication of notice.
- **Section 44 – By court intervention is case of:**
 - (i) A partner becoming unsound mind.
 - (ii) Permanent incapacity of partners to perform his duties.
 - (iii) Misconduct of partners effecting the business.
 - (iv) Willful or persistent breach of agreement by a partner.
 - (v) Transfer or sale of whole interest of a partner.
 - (vi) Improbability of business being carried on except at a loss.
 - (vii) Court being satisfied on other just and equitable grounds.

Q.7: What do you mean by Consequences of Dissolution?**Answer:****As per Section 45 - 55:**

- **Continuing liability until public notice:**
Partners continue to be liable for any act done by them, done on behalf of firm until public notice of dissolution is given.
- **Right to enforce winding up:**
Partner or his representative have a right against others, on dissolution:
 - (i) Apply firm's property in payment of firm's debt.
 - (ii) Distribute surplus amongst all partners.
- **Continuing authority of partners:**
Authority of partner continue:
 - (i) So far as necessary to wind up the firm,
 - (ii) To complete the pending transactions till the dissolution date.
- **Settlement of partnership accounts:**
 - (i) Losses including capital deficiencies:
 - Are first paid out of profits
 - Then out of capital
 - Lastly by partners in their profit sharing ratio.
 - (ii) Assets including partner's contribution are applied in the following order:
 - In paying debts of third parties.
 - In paying advances of each partner.
 - In paying capital of each partner.
 - The residue is distributed among partners in their profit sharing ratio.
- If the assets are not sufficient, the partners have to bear the loss in equal shares.
- **Personal Profits earned after dissolution:**
If surviving partners along with the representatives of deceased partner carry on firm's business and earn some personal profits, it must be accounted for by them to other partners.

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- **Return of premium on premature dissolution:**
On dissolution of partnership earlier than fixed period in all cases except
 - (i) Death of a partner.
 - (ii) Misconduct of partner paying premium.
 - (iii) Subject to agreement containing no provision for return of premium, the partner paying premium is entitled for the return of a reasonable part of premium.
- **Rights where partnership contract is rescinded for fraud or misrepresentation:**
- **Party is entitled to:**
 - (i) to a lien on the surplus or assets of firm remaining after the debts of firm are paid by him for the purchase of a share in firm and for any capital contributed by him.
 - (ii) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm, and
 - (iii) to an indemnity for the partners guilty of fraud or misrepresentation against all the debts of the firm.
- **Sale of goodwill after dissolution:** It can be sold separately or along with other properties of the firm.

Q.8: Describe the Buyer Rights include.

Answer:

- (i) Representing himself in business continuation.
- (ii) Maintaining his exclusive rights of business continuation.
- (iii) Soliciting former customers and restraining the seller from it.

Q.9: Describe the Seller's right.

Answer:

Vendors can enter into competition with purchaser unless there is an agreement of valid restrictions.

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Q.10: How many Mode of Giving Public Notice ?

Answer:

As per Section 72:

- Notice to Registrar of firms u/s 63
- Publication in official gazette.
- Publication in one vernacular newspaper circulating in the district of principal place of business.

SHORT PRACTICE QUESTIONS

1. What is dissolution ? What are its consequences ?
2. List out the consequences of non-registration of firm.
3. Differentiate between Partnership and Dissolution of Partnership firm.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - Nov [1] State with reason whether the following statement is correct or incorrect. (2 marks)

(viii) An unregistered firm can file a suit for set-off.

Answer:

Incorrect: An unregistered firm or any partner thereof cannot file a suit for set-off (except a claim for set off upto ₹ 100 only) until the registration is effected. [Section 69 (3), (4) (b)].

1998 - May [1] State with reasons whether the following statement is 'Correct' or 'Incorrect':

- (x) A third party cannot exercise any right against a non-registered firm. (2 marks)

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Answer:

Incorrect: Non-registration of a firm does not affect the right of third parties against the firm or its partners or the power of an official assignee or Receiver of the court. Therefore, non-registration of a firm will not make the partnership agreement or any transaction between the partners and third parties void (Section 69 of the Partnership Act, 1932).

1999 - Nov [1] State with reasons in brief whether the following is 'Correct' or 'Incorrect'.

- (x) A partner making advance of money to the firm, beyond the amount of his agreed capital is entitled to interest on such advanced money. (2 marks)

Answer:

Correct: The general rule is that partners are not considered as debtor and creditor among themselves and hence advance made to the firm by a partner cannot be regarded as loan. But clause (d) of Section 13 of the Indian Partnership Act, 1932 lays down that a partner who makes any payment or advance of money to the firm beyond the amount of his agreed capital, is entitled to interest thereon at the rate of six per cent per annum, subject to contract between the partners.

2002 - May [1] State with reasons in brief whether the following is 'Correct' or 'Incorrect'.

- (ix) An unregistered firm may institute a suit if the value of the suit does not exceed ₹ 100. (2 marks)

Answer:

Correct Though registration of firm is not compulsory yet unregistration creates certain disabilities. The general principle under Section 69 of the Indian Partnership Act, 1932 is that an unregistered firm cannot file a suit against a third party to enforce a right arising from a contract. But it is an exception to the general rule that an unregistered firm may institute a suit or claim of set off if the value of the suit does not exceed ₹ 100.

[Chapter → 3 Unit : 3] Registration and Dissolution of.. ■ 2.379

2002 - Nov [1] State with reasons in brief whether the following is 'Correct' or 'Incorrect'.

- (x) A partner of unregistered firm can sue for the dissolution of a firm. (2 marks)

Answer:

Correct: According to Section 69(3) (a) of the Indian Partnership Act, 1932, a partner of unregistered firm can sue for the dissolution of the firm.

DISTINGUISH BETWEEN

2000 - May [7] (iv) Distinguish between Partnership and Joint Stock Company. (5 marks)

Answer:

Partnership and Joint Stock Company:

- (a) **Personality:** A firm is not legal entity whereas a company is a juridical person distinct from its members.
- (b) **Agency:** In the case of a firm, every partner is an agent of other partners as well as of the firm but in case of company, members are not agents of the company.
- (c) **Profits:** Profits of a firm is distributed among the partners according to deed of partnership. But in the case of company, distribution of profit is optional as the company may or may not declare dividends.
- (d) **Liability:** In firm, the liability of partners is unlimited but in a company, liability is always limited to the amount of shares or guarantee.
- (e) **Property:** Property of firm is joint estate of all the partners whereas in a company, property belongs to company and not of shareholders.
- (f) **Transfer of share:** In the case of partnership transfer of a partner's right is not possible without the consent of all the partners, though his interest can be assigned to a third party who has a right to share in profits but has no other right, but in the case of a public company, share are transferable and quoted on stock exchange.

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- (g) **Management:** In partnership management is by partners, but in a company, Board of Directors do the management, shareholders only attend in general meeting to vote.
- (h) **Number of members** in partnership is minimum 2 and maximum 20 (in banking it is 10) but the case of a private company the minimum is 2 and maximum 50 excluding past and present employees. And in the case of a public company, it is 7 and no restriction on the maximum.

2002 - Nov [5] (e) Distinguish between 'Dissolution of firm' and 'Dissolution of partnership'. (4 marks)

Answer:

Dissolution of firm Vs. Dissolution of Partnership:

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

2018 - May [3] (a) Distinguish between dissolution of firm and dissolution of partnership. (2 marks)

Answer:

Please refer 2002 - Nov [5] (e) on page no. 380

[Chapter → 3 Unit : 3] Registration and Dissolution of.. ■ 2.381

DESCRIPTIVE QUESTIONS

1994 - Nov [2] Comment on

(e) A retiring partner is required to give a public notice under the Partnership Law. (5 marks)

Answer:

A retiring partner is required to give a public notice under the partnership law: The law imposes a duty on the retiring partner to give public notice of his retirement. Public notice of this kind raises a presumption that those dealing with the firm including past and present customers have come to know that a particular partner has retired.

Sec. 32(4) provides that notice of retirement can be given either by the retired partner himself or by any partner of the continuing firm or by the firm itself. In the case of a registered firm, the notice must be given to three places, namely, the Registrar of Firms, the Official Gazette and at least one vernacular newspaper circulating in the district where the firm has its place or principal place of business. Where the firm is not registered, it is enough that the matter is announced in at least one vernacular newspaper circulating in the district where the firm has its place or principal place of business.

If the retiring partner fails to give such a notice then he continues to be liable for the acts of the firm even after his retirement and similarly, the firm will be bound by the acts of the retired partner done after retirement. This is based on the principle of holding out.

A retired partner will not be liable to any third party who deals with the firm without knowing that he was a partner. It is for this reason that no public notice need be given when a dormant or sleeping partner retires.

1994 - Nov [3] (b) State briefly the consequences of non-registration of a partnership firm. (10 marks)

Answer:

Consequences of Non-Registration of the Firm: Partnership is the result of an agreement between two or more persons. It need not necessarily be registered. Registration is optional and there is no penalty for non-registration of the firm. Yet

Section 69 of the Partnership Act imposes certain limitations on an unregistered firm, and these impediments compel a firm to get itself registered. Following consequences will result from the non-registration of the firm:

- (i) **No suit by Partners:** A partner of an unregistered firm can not sue the firm or any of his present or past co-partners for the enforcement of any right arising from a contract conferred by the partnership act.
- (ii) **No suit by a Firm:** A firm can not sue a third party for the enforcement of any right arising from a contract (Puranmal Ganga Ram Vs. Central Bank of India, 1993).
- (iii) **No right of set off:** An unregistered firm or any partner thereof cannot claim a set off in a proceeding instituted against the firm by a third party of enforce a right arising from a contract. This right of set-off, however, is not affected if the claim of set-off is for less than ₹ 100 in value.

Exceptions: Non-registration of a firm does not, however, affect the following rights, namely:

- (a) The right of third parties to sue the firm or any partner.
- (b) The right of partners to sue for the dissolution of the firm or for the form or for the accounts of a dissolved firm or for the realisation of the property of a dissolved firm.
- (c) An Official Receiver or Assignee of a Court acting for an insolvent partner of an unregistered firm may bring a suit for the realisation of the property of an insolvent partner.
- (d) The right of firm or partners of firm having no place of business in India.
- (e) The right to sue or claim a set-off if the value of suit does not exceed ₹ 100.
- (f) Non-registration will not affect the enforcement of rights arising otherwise than out of a contract, e.g., for an injunction against wrongful infringement of a trade mark, trade name or patent of the firm.
- (g) A partner can bring a suit for damages for misconduct against another partner.

1995 - May [2] Comment on following:

- (e) Dissolution of a partnership is different from the dissolution of a firm. (5 marks)

Answer:

Dissolution of partnership is different from the dissolution of a firm:

According to Indian Partnership Act there is a firm distinction between dissolution of firm and dissolution of partnership. Dissolution of the firm may not necessarily mean dissolution of a partnership as in the case of dissolution of a partnership the firm may continue with some of the remaining partners. According to Section 39, the dissolution of partnership between all the partners of a firm is called the "dissolution of the firm". The words "between all the partners" as stated in this Section are very important. This means that the firm is said to be dissolved only when each and every member of the firm ceases to carry on the business in partnership. Thus, where one or more partners cease to be partners in the firm while other remain, as in the case of retirement or expulsion of a partner, the partnership is dissolved but the firm may not be dissolved, the remaining partners may continue to carry on the business of the firm.

The follows that the dissolution of a firm necessarily involves the dissolution of partnership whereas dissolution of partnership does not necessarily involve the dissolution of a firm.

1995 - May [5] Answer the following

- (d) When shall a retired partner be discharged from his liabilities for the acts of the firm before retirement? (5 marks)

Answer:

Liability of a retiring partner: The retiring partner remains liable to the creditors for the acts of the firm done before and up to the date of his retirement. The retiring partner is also liable to third parties for all transactions of the firm begun but unfinished at the time of his retirement. On retirement of a partner, his co-partners may agree to release him from such debts as were existing up to the date of his retirement. But even then the retiring partner continues to be liable to creditors. A retiring partner can be released only if (a) the remaining partners agree to release him and a due

notice about his retirement is given; (b) the creditor has expressly or impliedly agreed to release the retiring partner and to accept the reconstituted firm as his debtor.

Example: A, B and C are partners and D is their creditor, B retires. A and C agrees to release B from the liability. D also agrees with B and the reconstituted firm of A and C to release B. B is discharged from liability to D. The law imposes a duty on the retiring partner to give public notice of his retirement. If the retiring partner fails to give such a notice then he continues to be liable for the acts of the firm even after his retirement and similarly, the firm will be bound by the acts of the retired partner done after retirement. This is based on the principle of holding out.

A retired partner will not be liable to any third party who deals with the firm without knowing that he was a partner. It is for this reason that no public notice need be given when a dormant or sleeping partner retires.

1996 - May [2] Comment on the following:

(e) Non-registration of partnership creates disabilities. (5 marks)

Answer:

Non-registration of partnership: The Indian Partnership Act does not make the registration of firm compulsory nor does it impose any penalty for non-registration. Section 69 of the Partnership Act, however, gives rise to certain disabilities on the ground of non-registration which are as follows:

1. The firm or any other person on its behalf cannot bring an action against the third party for the breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
2. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any conduct.
3. A partner of an unregistered firm is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But such a person may sue for dissolution of the firm or for accounts and realisation of his share in the firm's property where the firm is dissolved.

Non-registration of a firm does not affect the right of third parties against the firm or its partners or the power of an official assignee, Receiver of Court under the Presidency Towns Insolvency Act, 1920 to realise the property of an insolvent partner.

1996 - Nov [5] Answer the following:

(d) What is the procedure of giving public notice of any matter in respect of Partnership Firms? (5 marks)

Answer:

Procedure of public notice: In every case where the public notice of any matter in respect of partnership firms is required to be given under the Partnership Act, 1932, it must be given by publication in the official gazette and in at least one vernacular newspaper circulating in the district where the firm of which it relates has its place or principal place of business.

In the case of registered firm, apart from the aforesaid notification, a notice is also required to be served on the Registrar of firms under Section 63 where the matters relate to (a) the retirement or expulsion of a partner, or (b) dissolution of the firm, or (c) the election, on attaining majority, to be or not to be a partner, by a person who as a minor was admitted to the benefit of partnership.

If notice of retirement is published only in local newspaper but not given to Registrar of firms and in Government Gazette, it is not sufficient to absolve retiring partner from liability to third parties.

1997 - May [4] Define 'Partnership' and state the procedure for its registration. (10 marks)

Answer:

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. (Section 4).

The above definition of the Partnership given by the Indian Partnership Act, lays down three important elements:

- (i) It must be a result of an agreement between two or more persons;
- (ii) The agreement must be to share the profits of the business; and
- (iii) The business must be carried on by all or any of them acting for all.

All the above elements must co-exist before a partnership can come into existence. Thus existence of an agreement, a business, sharing of profits and mutual agency form a core part of the existence of a partnership.

Procedure for Registration: The firm has to file a statement in the prescribed form either in person or by post with the prescribed fee, with the Registrar of the Firms of the area in which the firm is situated or is to be situated.

The Statement is to state the following particulars:

- (i) The firm's name.
- (ii) The principal place of business.
- (iii) The name of its other places of business.
- (iv) The date of joining of each partner.
- (v) The names in full and the permanent addresses of the partners, and
- (vi) The duration of the firm.

When the Registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the Register of Firms) and shall file the statement.

The registration shall be completed only when the firm receives a certification of Registration. However, registration is deemed to be complete as soon as the application in the prescribed form and with the prescribed fee with necessary details concerning the particulars of the partnership is delivered to the Registrar. The recording of an entry in the Register of firms is a routing duty of Registrar.

1997- Nov [4] (a) Explain the meaning of 'dissolution of a partnership firm'. When a dissolution of a firm takes place? (10 marks)

Answer:

Dissolution of a firm means the discontinuation of the jural relation existing between all the partners of the firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and others is dissolved, but the rest may decide to continue. In such cases, there is in practice no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm. In the case of dissolution of firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Section 39 of the Indian Partnership Act, defines it as follows:

"The dissolution of partnership between all the partners of a firm is called the dissolution of the firm". Thus, the business is stopped and the relations between all the partners come to an end.

When a dissolution of a firm takes place?

Dissolution of a firm may take place in the following manner (Sections 39-44):

1. As a result of any agreement between all the partners, this is called dissolution by agreement.
2. By the adjudication of all the partners, or of all the partners but one, as insolvent, this is known as compulsory dissolution.
3. By the business of the firm becoming unlawful, this is known as compulsory dissolution.
4. **As per the agreement, upon happening of any of the following contingencies:**
 - (a) efflux of time;
 - (b) completion of the venture for which it was entered into;
 - (c) death of a partner;
 - (d) insolvency of partner.

In case of death of a partner, the number of the partners if do not exceed two, the firm is to be dissolved. In case the number of partners is more than two, the firm may continue even after the death of one partner, provided other partners agree to do so.
5. By a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned as from the date of the communication of the notice; and
6. **By intervention of court in case of:**
 - (i) a partner becoming of unsound mind;
 - (ii) permanent incapacity of a partner;
 - (iii) misconduct of a partner affecting the business;
 - (iv) wilful persistence breach of agreement by a partner;
 - (v) transfer or sale of the whole interest of partner;
 - (vi) improbability of the business being carried on save at a loss;
 - (viii) the court being satisfied on other equitable grounds that the firm should be dissolved.

1998 - May [5] (d) What will be the consequences in relations of partners of a partnership firm resulting from:

- (i) Insolvency of partner, and
- (ii) Death of a partner? (5 marks)

Answer:

Consequences of Insolvency and death of a partner:

- (i) **Insolvency of a partner (Section 34):** When a partner in a firm is adjudicated and insolvent. He ceases to be a partner on the date of the order of adjudication whether or not the firm is thereby dissolved. His estate (which thereupon vests in the official assignee) ceases to be liable for any act of the firm done after the date of the order, and the firm also is not liable for any act of such a partner after such date (whether or not under a contract between the partners the firm is dissolved by such adjudication).
- (ii) **Death of a partner (Section 35):** Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death (Section 35).

Ordinarily, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership by death of a 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 [Commissioner of Income Tax v. G.S Mill, AIR (1966) S.C. 24].

Section 35 deals with the situation where the firm continues its business without dissolution and lays down that, in such a case, the estate of a deceased partner is not to be held liable for any act of the firm done after his death. Proviso to Section 45 lays down an incidental rule applicable to a case where the death of a partner has caused dissolution of the firm.

In order that the estate of a 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 person having dealings with the firm.

1998 - Nov [4] (a). State the matters for which a partner of partnership firm required to give 'Public Notice' under the provision of the Indian Partnership Act, 1932. State also the consequences for not giving a public notice where it is required to be given under the Partnership Act. (10 marks)

Answer:

Public Notice: As per the requirements of Section 72 of the Indian Partnership Act, 1932 a public notice has to be given:

1. On the retirement or expulsion of a partner from a registered firm.
2. On the dissolution of a registered firm.
3. On the election to become or not to become a partner in a registered firm by a minor on his attaining majority.

Consequences of not giving public notice as required above;

1. If a minor admitted to the benefits of partnership under Section 30 fails to give public notice within 6 months of his attaining majority or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, that he has elected to become or not to become a partner in the firm, he shall become a partner in the firm on the expiry of the said 6 months and is liable as a partner of the firm.
2. If a retiring partner does not give a public notice of the retirement from the firm under Section 32, he and the other partners shall continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement.
3. If in case of expulsion of a partner from the firm a public notice is not given, the expelled partner and the other partners shall continue to be liable to third parties dealing with the firm as in the case of a retired partner. (Section 33).
4. If a public notice is not given on dissolution of a registered firm, the partners shall be liable to third persons of any act done by any of them which would have been an act of the firm if done before the dissolution (Section 45). When public notice is given of the dissolution of a firm, no partner shall have authority to bind the firm except for certain specific purposes as given in Section 47. According to this section, after the dissolution of a firm, the authority of each partner to bind the firm and their mutual rights and obligations of the partners shall continue:

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- (i) so far as may be necessary wind up the affairs of the firm; and
- (ii) to complete transactions begun but unfinished at the time of the dissolution.

1999 - Nov [2] Explain briefly of the following:

- (iv) Dissolution of partnership may or may not involve dissolution of firm. (5 marks)

Answer:

Dissolution of partnership may or may not involve dissolution of firm:

The Indian Partnership Act, 1932 makes a distinction between the dissolution of partnership and dissolution of firm. Section 39 of the Act provides that the dissolution of partnership between all the partners of a firm is called the dissolution of the firm. Dissolution of partnership involves change in the relation of partners but it does not end the partnership. **For example**, where X, Y and Z were partners in a firm and X died or retired, the partnership firm would come to an end. If Y and Z agree to continue the business, the partnership between X, Y and Z would come to an end, although the firm of Y and Z continue in the firm. So the dissolution of a partnership may or may not include the dissolution of the firm, but the dissolution of the firm necessarily means the dissolution of the partnership as well. On the dissolution of partnership, the business may be carried on by the remaining constituted firm but on the dissolution of firm, all business must be stopped, the assets of the firm realised and distributed among the partners.

1999 - Nov [4] (i) Is registration of a partnership firm necessary? Discuss the effects of non-registration of a firm. (10 marks)

Answer:

The registration of a firm is not compulsory. But an unregistered firm suffers from certain disabilities and so registration is necessary.

The effects of non-registration as provided in Section 69 of the Indian Partnership Act, 1932 are:

- (a) In an unregistered firm, a partner cannot file a suit against the firm on any other partner for enforcing his right conferred in the Act or arising from a contract.

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- (b) No suit can be filed on behalf of an unregistered firm against any third party for the purpose of enforcing a right arising from a contract.
- (c) An unregistered firm or any partner thereof cannot claim setoff in a suit instituted against the firm by a third party to enforce a right arising from a contract.

But the non-registration of a firm does not attract the following rights:

- (i) The right of a third party to sue the firm or any other partner.
- (ii) The right of a partner to sue for dissolution of firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm.
- (iii) The power of official assignee or receiver to realise the property of an insolvent partner.
- (iv) The rights of firms having no place of business in India.
- (v) A suit for set off not exceeding ₹ 100 in amount which is of a nature cognisable by Small Causes Court.

2000 - Nov [7] Answer briefly of the following:

- (e) Mode of effecting registration of a partnership firm (5 marks)

Answer:

Mode of Effecting Registration of a Partnership Firm: The registration of a partnership firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form. It is not essential that the firm should be registered from the very beginning. When the partners so decide they may go for registration of the firm. However, the application is to be made by them in the prescribed form as per the provisions of Section 58 of the Indian Partnership Act, 1832.

The statement must be accompanied by the prescribed fee and must contain the following matters:

1. The firm's name.
2. The principal place of business.
3. The names of its other places of business.
4. The date of joining the firm by each partner.
5. The name in full and the permanent addresses of the partners.
6. The duration of the firm.

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The aforesaid statement is signed by all the partners or by their agents specially authorised in this behalf. Each partner so signing it shall also verify it in the manner prescribed.

When the Registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the Register of Firms) and shall file the statement.

Subsequent alterations like, alterations in the name, place of business, constitution of the firm etc. may also be registered.

2001 - Nov [4] (a) You want to form a partnership firm. Would you like to get it registered? If so, why? Also state the procedure you have to follow for getting the firm registered. (10 marks)

Answer:

Yes, the firm should be registered under the Indian Partnership act, 1932 since its non-registration has the following consequences; (Section 69).

1. A person suing as a partner of an unregistered firm cannot sue the firm or any partners of the firm to enforce a right arising from a contract or conferred by the Partnership Act.
2. An unregistered firm cannot sue a third party to enforce a right arising from a contract.
3. An unregistered firm or any partner thereof cannot claim a set-off in a proceeding instituted against the firm by a third party to enforce a right arising from a contract.

Non-registration, however, does not affect the right of a firm or of its partners having no place of business in India. It also does not affect the right to any suit or claim of set-off not exceeding ₹ 100.

Procedure; (Section 58 and 59):

The registration of a firm may be effected at any time by filing an application in the form of a statement, giving the necessary information with the Registrar of Firms of the area. The application shall be accompanied by the prescribed fee. It shall state:

- (a) The name of the firm;
- (b) The place or principal place of business of the firm;
- (c) the names of other places where the firm carried on business.

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- (d) The date when each partner joined the firm;
- (e) The names in full and permanent address of the partners;
- (f) The duration of the firm.

The statement shall be signed by all the partners or by their agents specially authorized in this behalf. [Section 58(1)]. It shall also be verified by them in the prescribed manner. [Section 58(2)].

When the Registrar is satisfied that the above provisions have been duly complied with, he shall record an entry of the statement in the Register of Firms and file the statement. (Section 59). He shall then issue under his hand a certificate of registration. Registration is effective from the date when the Registrar files the statement and makes entries in the Register of Firms and not from the date of presentation of the statement to him.

2002 - May [7] Explain the following (Give brief answers):

(e) Dissolution of a Partnership Firm by the intervention of the Court.

(5 marks)

Answer:

Dissolution of a firm by the intervention of the Court:

A firm can be dissolved by the intervention of the Court on the following grounds:

- (i) A partner becoming of unsound mind;
- (ii) Permanent incapacity of a partner to perform his duties as such.
- (iii) Misconduct of a partner affecting the business.
- (iv) Willful or persistent breaches of agreement by a partner.
- (v) Transfer or sale of the whole interest of a partner.
- (vi) Improbability of the business being carried on save at a loss.
- (vii) The Court being satisfied on other equitable grounds that the firm should be dissolved.

2018 - May [3] (b) What are the consequences of Non-Registration of a Partnership Firm? Discuss. (4 marks)

Answer:

Under the English law, the registration of firms is compulsory. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under section 69, non

registration of partnership gives rise to a number of disabilities. Thus, the consequences of non-registration have a persuasive pressure for their registration. These disabilities are as follows:

1. No suit in a civil court by firm or other co-partners against third party:

The firm or any other partner on its behalf cannot bring an action against third party for breach of contract entered into by the firm, unless the firm is registered and the person suing are or have been shown in the register of firms as partners in the firm.

2. No relief to partners for set-off of claim:

In an action against the firm by a third party, neither the firm nor the partner can claim any set off, if the suit be valued for more than ₹ 100.

3. Aggrieved partner cannot bring legal action against other partner or the firm:

A partner of an unregistered firm is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. (But such a person may sue for dissolution of firm).

4. Third party can sue the firm:

In case of an unregistered firm, an action can be brought against the firm by a third party.

2018 - Nov [6] (b) State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (4 marks)

Answer:

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

- (a) **Insanity / Unsound mind** : Where a partner (not a sleeping partner) has become of unsound mind, the Court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
- (b) **Permanent incapacity** : When a partner other than the partner suing has become in any way permanently incapable of performing his duties as partner, then the Court may dissolve the firm.

(c) **Misconduct** : Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the Court may order for dissolution of the firm, by giving regard to the nature of business

(d) **Persistent breach of agreement** :

Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him.

2019 - June [6] (b) "Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the Various disabilities or disadvantages that a non-registered partnership firm can face in brief? (4 marks)

Answer:

Under the English Law, the registration of firms is compulsory. But the Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration.

However, section 69, of the Act gives rise to a number of disabilities which will attach to an unregistered partnership firm. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities are as follows:

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

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2019 - Nov [6] (b) Dissolution of a firm is different from dissolution of Partnership". Discuss. (4 marks)

Answer:

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

Dissolution of Firm Vs. Dissolution of Partnership

S. No	Basic of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

PRACTICAL QUESTIONS

2019 - June [4] (b) M/S XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th Aug. 2016, they inducted Mr. G an

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expert in the field of carpet manufacturing as their partner. On 10th Jan. 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

- (i) Examine whether action by the partners was justified or not?
- (ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (6 marks)

Answer:

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

- (i) the power of expulsion must have existed in a contract between the partners.
- (ii) the power has been exercised by a majority of the partners, and
- (iii) it has been exercised in good faith.

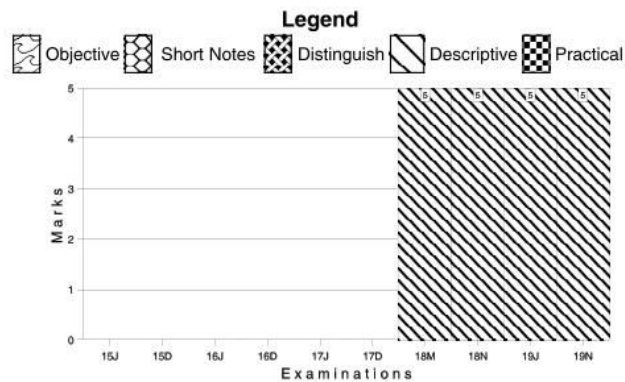
If all these conditions are not present the expulsion is not deemed to be done in *bonafide* interest of the business of the firm.

If a partner is otherwise expelled, the expulsion is null and void.

Thus, action taken by partner in expelling partner G is valid.

CHAPTER	<h2 style="margin: 0;">4</h2> <h3 style="margin: 0;">The Limited Liability Partnership Act, 2008</h3>
4	

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



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SELF STUDY QUESTIONS

Q.1: What do you understand by limited liability partnership?

Answer:

- Limited Liability Partnership (LLP) Act was passed by parliament on 12th December, 2008 and assent by President was given on 7th January, 2009.
 - It has 81 Sections and 4 Schedules
- Schedule 1** – Mutual rights and duties of partners and partnership in absence of agreement.
- Schedule 2** – Conversion of Firm to LLP.
- Schedule 3** – Conversion of Private Ltd. to LLP.
- Schedule 4** – Conversion of Public Ltd. to LLP.
- Partnership Act is not applicable to LLP form of business.

1. Limited Liability Partnership - Meaning and Concept:

Meaning:

- Is a new form of business with limited liability.
- It is a mid way between a partnership firm and Private Limited Company.
- It contains elements of 'body corporate' and 'partnership' form of business.

Q.2: What are the Characteristics/Salient Features of a Limited Liability Partnership?

Answer:

- It is a body corporate.
- It has perpetual succession.
- Separate Legal Entity.
- Mutual Agency between partner and LLP only.
- Rights and duties as per agreement.
- Artificial legal person.
- Common seal.
- Limited liability of partners.

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- Designated Partner is responsible for legal compliances.
- Must have minimum 2 individual partner and maximum no limit.
- LLP cannot be formed for charitable and non-economic purpose.
- Can be investigated by Central Government through appointment of competence authority.
- Compromise, arrangements will be as per LLP Act, 2008.
- Forms to be e-file on the portal of www.mca.gov.in using digital signature.
- LLP formed, incorporated, or registered outside India having place of business in India is called Foreign LLP. It can become a partner in an Indian LLP.

Q.3: How many Advantages of Limited Liability Partnership (LLP) are there?

Answer:

- Easy formation/dissolution.
- Limited Liability of Partners.
- Less legal formalities.
- Flexible capital structure.
- Low cost compliance.

Q.4: What are the steps followed for Incorporation of Limited Liability Partnership?

Answer:

Essential Elements for incorporation:

- At least two designated partners.
- Registered office in India along with utility bill as proof.
- Designated Partners must be individuals.
- One of them must be resident in India.
- Designated Partner must have DPIN i.e. Designated Partner Identification Number which is allotted by MCA.
- LLP Agreement consisting all rights and duties of partners.
- In the absence of LLP Agreement provisions of Schedule First of LLP Act, 2008.
- Name of LLP form of business.

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Process:

Step 1: Elect member and designed among them at least two designated partners.

Step 2: Obtain DPIN of Designated Partners and Digital Signature Certificate (DSC) to sign e-form.

Step 3: Fill e-form Limited Liability Partnership-1 for reservation of name (upto 6 choices can be indicated).

Step 4: Once LLP-1 is approved, fill LLP-2 giving details of all partners along with Designated Partners who have consented to be partners.

Step 5: Draft LLP Agreement and file with registrar in E-form LLP-3 within 30 days of incorporation of LLP.

Q.5: Distinction between Limited Liability Partnership and Partnership Firm.

Answer:

Limited Liability Partnership	Partnership Firm
It is governed by Limited Liability Partnership Act, 2008.	It is governed by Indian Partnership Act, 1932.
It is a body corporate.	It is not a body corporate.
Registration is mandatory.	Registration is voluntary.
Separate legal entity with perpetual succession.	No separate legal entity and has no perpetual succession.
Limited Liability.	Unlimited Liability.
Its jurisdiction is under Central Government.	Its jurisdiction is under State Government.
Working Partners are Designated Partner.	No distinction among partners, all are called partner.
It must have its common seal.	Not required.

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No limitation on maximum number of partners.	Maximum number of Partners can be upto 50 as per Companies Act.
Minor cannot be a partner.	Minor can be admitted as Partner to the benefits of partnership.

Q.6: Distinguish between Limited Liability Partnership and Limited Liability Company (LLC).

Answer:

Limited Liability Partnership	Limited Liability Company
It is governed by Limited Liability Partnership Act, 2008.	It is governed by Companies Act, 2013.
Members are known as partners.	Members are known as shareholders.
Name must end with Limited Liability Partnership	Name must end with word 'Limited' or 'Private Limited'.
Minimum number of member required as two.	In case of Private company minimum 2 members are required, in case of Public Company minimum 7 members are required.
No limitation on maximum number of members of Limited Liability Partnership.	Maximum number of member in Private Company is 200 and in case of Public Company there is no limit.
Company must have minimum 2 designated partners for carrying on business activities.	Company must have directors to manage its business in case of Private Company minimum 2. In case of Public Company minimum 3.

[Chapter ⇒ 4] The Limited Liability Partnership.... ■ 2.403

SHORT PRACTICE QUESTIONS

1. What do you mean by limited liability partnership. Give its characteristics?
2. List out the process of incorporation of LLP.
3. Differentiate between:
 - (a) LLP and LLC
 - (b) LLP and Partnership firm.

PAST YEAR QUESTIONS AND ANSWERS

DESCRIPTIVE QUESTIONS

2018 - May [2] (b) What are the essential elements to form a LLP in India as per the LLP Act, 2008? (5 marks)

Answer:

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

Essential Elements to in Corporate LLP:

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

- (i) To complete and submit for incorporation documents with Registrar electronically.
- (ii) To have atleast two partner for incorporation (whether individual or body corporate).
- (iii) To have a registered office in India to which all communication will be made.

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- (iv) To appoint minimum two individuals as designated partner who will be responsible for number of duties. Atleast one of them should be resident in India.
- (v) Designated partner (s) should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership deed/agreement between and partner inter-se or between the LLP and its partner.
- (vii) Decide upon LLP name.
LLP are body corporate and hence must be registered with Registrar of LLP.

2018 - Nov [2] (b) Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. (5 marks)

Answer:

The essential elements to incorporate LLP are:

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

[Chapter ⇒ 4] The Limited Liability Partnership.... ■ 2.405

2019 - June [2] (b) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. (5 marks)

Answer:

A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

LLP provides the benefits of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement. Owing to its flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprise and for investment by venture capital.

LLP is a hybrid between a company and partnership:

Some features/advantages of LLP are:

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

2019 - Nov [2] (b) Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. (5 marks)

Answer:

A Limited Liability Partnership, popularly known as LLP combines the advantage of both the company and Partnership into a single form of organization.

In an LLP one partner is not responsible or liable for another partner's misconduct or negligence.

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Every partner of an LLP would be, for the purpose of the business of the LLP, an agent of the LLP but not of the other partners. Liability of partners shall be limited except in case of unauthorized acts, fraud and negligence. But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of the limited liability partnership whether in a contract or otherwise, is solely the obligation of the LLP. The liabilities of LLP shall be met out of the property of the LLP.

Liability of LLP and its fraudulent partner shall be unlimited, if an act carried out by a limited liability partnership, or any of its partners,

1. with Intent to defraud creditors or any other person, or
2. for any fraudulent purpose.

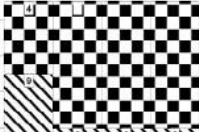

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

CHAPTER	The Companies Act, 2013
5	

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective  Short Notes  Distinguish  Descriptive  Practical

For detailed analysis Login at www.scannerclasses.com
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SELF STUDY NOTES

1. Introduction:

- Companies Act, 2013 was notified on 30th August, 2013.
- It consists of 470 sections (covered in 29 chapters) and 7 Schedules.
 - (a) Companies under Company law (existing and previous).
 - (b) Insurance Company (except in so far as the said provisions are inconsistent with the provisions of Insurance Act, 1938, IRDA Act, 1999).
 - (c) Banking Company (except in so far as the said provisions are inconsistent with the provisions of Banking Regulation Act, 1949).
 - (d) Power Company (except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003).
 - (e) Other companies governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act.
 - (f) Body corporate, incorporated by any Act for the time being in force as the CG may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification.

2. Company: Meaning and its features:

- As per Section 2 (20) of the Companies Act, 2013 "Company" means a company incorporated under Companies Act, 2013 or under any previous company law.

Features of a Company:

1. Corporate Personality/Separate legal entity:

- Company is a separate legal entity distinct from individuals who are its members.
- It is known by its own name.
- It has its own seal (common seal i.e. official signature of company).

- Its members are its owner but they can be its creditors simultaneously.
- It is capable of owing property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual.
- A share holder can be held liable for the company's Act even if he holds virtually the company's entire share capital.
- Share holders are not the company's agent and so they cannot bind it by their acts.
- The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights nor can they be sued in respect of its liabilities.
- Members does not even have insurable interest in company's property.

Relevant Case Law:

Macaura V/s Northern Assurance Co. Ltd.

- Macauro was the holder of all shares (except one).
- He was also the major creditor of the company.
- He insured company's timber in his own name instead of name of company.
- A fire broke and timber was destroyed, Macauro claimed compensation from insurance company.

Held, Insurance company not liable to pay him, since, shareholder has no right to the property owner by company, for he has no legal or equitable interest in them.

2. Perpetual succession:

- Death, insolvency, insanity, etc. of any member does not affect continuity legal existence and identity of the company.
- Member may come and go, but the company goes on forever.
- It can be dissolved only under law through winding up procedure.

3. Limited Liability:

- Members of a company cannot be held liable for its debts.
- In case limited company, the liability of members is limited to the extent of unpaid value of shares held by them.
- In case of company limited by guarantee members are liable to the extent of amount guaranteed by them.
- Guaranteed amount can be called only at the time of company's liquidation winding up.

4. Artificial Legal Person:

- Company is purely a creation of law, it is invisible, intangible and exists only in the eyes of law.
- It has no soul, no body, but has a position to enter or exit into a contract, to appoint a people as its employees.

5. Common Seal:

- It is the official signature of the company.
- Company's name is engraved on it.
- A document not bearing common seal of the company is not authentic and has no legal force behind it.
- A rubber stamp does not serve the purpose.

3. Corporate Veil Theory:

- Due to law's fiction, company is seen as an entity distinct from its members, but actually company is an association of persons who are the beneficial owners of company property.
- No member can be held, liable for the company's Act even if he holds virtually the entire share capital of the company.
- Lifting of corporate veil means ignoring the company's separate legal identity. It involves disregarding of the corporate personality and looking behind the corporate entity, at the controlling persons and may make their liable for debts and obligations of the company.
- It is permissible only when it is permitted by the statute.

Relevant Case Law:

Saloman V/s Saloman & Co.

- Mr. Saloman was carrying on the business of leather merchant and boot manufacturing as a sole proprietor.

- He formed a limited company for taking over his business.
- The company's nominal capital was £ 40,000 in £ 1 shares.
- Payment of total purchase consideration of £ 38,782 was in following form:

(i) Fully paid shares of £ each issued to Salomon	£ 20,000
(ii) Secured debentures issued to Salomon	£ 10,000
(iii) Cash Paid	£ 8,782
- Other 6 members of his family were issued 1 share each.
- Solomon held virtually the entire share capital of the company. Hence, the company was called as 'one man company'.
- Due to trade depression, company went into liquidation.
- Company's liabilities was £ 10,000 secured by debentures and its assets realised £ 6,050.
- Unsecured creditors owing £ 8,000 claimed that Salomon was carrying on business in the name of the company. Thus, company was a mere agent of Salomon.
- They claimed that one man cannot owe money to himself.
- **Court held that:**
 - (i) Salomon & Co. was a real company fulfilling all the legal requirements.
 - (ii) It had an identity separate from its members.
 - (iii) Thus, secured debentures even though held by Salomon, were to be paid in priority to unsecured creditors.

This case established the legality of "one-man company" and principle of limited liability.

Lifting of corporate veil is permitted in the following cases:

- (i) If the company is formed for commission of
 - (a) fraud and improper conduct.
 - (b) to defraud creditors.
 - (c) to avoid legal obligations.

Relevant Case Laws:

1. Gilford Motor Co. V/s Harnie.
2. Jones V/s Lipman.

- (ii) To determine whether company is an enemy company or not.
Relevant Case Law:
 1. Daimler Co. Ltd. V/s Continental Tyre and Rubber Co.
- (iii) To prevent evasion of taxes and duties.
Relevant Case Laws:
 1. CIT V/s Meenakshi Mills Ltd.
 2. Sir Dinshaw Manakjee Petit.
- (iv) If purpose of company's formation is to avoid a welfare legislation e.g. reducing its liability of bonus payable under Bonus Act.
Relevant Case Law:
 1. The workers employed in Associated Rubber Industries Ltd. Bhavnagar V/s The Associated Rubber Industries Ltd. Bhavnagar and other, A.I.R. 1986 SCI.
- (v) For the purpose of protecting the public policy and thus, preventing the transaction contrary to public policy.
Relevant Case Law:
 1. Connors Bros. V/s Connors.
- (vi) If the holding company has incorporated the subsidiary company for the sole purpose of using it as an agent.
Relevant Case Law:
 1. Re, R.G. Films Ltd.

Various statutory provisions for lifting the corporate veil are as follows:

1. Reduction in membership below the statutory minimum.
2. Mis description of name.
3. Presentation of group accounts of holding and subsidiary companies.
4. Fraudulent Trading.
5. Payment of Arrears of tax.
6. *Ultra-vires* acts.
7. Misrepresentation in prospectus.

4. Classes of Companies under the Act:

(I) On the basis of liability:

(a) Company limited by shares:

- It is a registered company where public or private company.
- Liability of members is limited to the unpaid amount on the shares held by them.
- This should be stated in MOA of such company.
- It arises when a valid call in made by the company.

(b) Company limited by Guarantee:

- It is a registered company whether public or private company.
- Liability of members is limited to the amount that he has guaranteed to pay to the company.
- Liability arises only in the event of winding up of company.
- Its MOA should state the amount guarantee given by members.

Example: Clubs, trade associations etc.

(c) Unlimited Company:

- Its memorandum does not in any way limits the liability of its members.
- Every member is liable to contribute to the company's assets until all its debts are paid in full.
- Not common in India.
- Members are not however, liable directly to the company's creditors.
- Liquidator asks the members to contribute in the event of company's winding up.
- It may be subsequently converted into limited company, subject to certain conditions.
- The liability is extended to the personal property of the members.

(II) On the basis of members:**(a) One Person Company:**

- It means a company which has only one person as a member.
- The MOA of such company is required to indicate, the name of other person, with his prior consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall be filed with ROC at the time of its incorporation along with MOA and AOA.
- Only a natural person who is an Indian citizen and resident in India is eligible to incorporate OPC and be its nominee.
- "Resident in India" means a person who has stayed in India for a period of not less than 182 days during immediately preceding one calendar year.
- It is considered as a private company.
- It has been granted many relaxations in compliance and procedural aspects.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one OPC.
- No minor shall become a member or nominee of OPC or hold shares with beneficial interest.
- It cannot be incorporated or converted into Section 8 company.
- It cannot carry out Non-Banking Financial Investment Activities including investment in securities of any Body corporate.
- It cannot convert voluntarily into private company unless two years have expired from date of its incorporation, except if its paid-up capital is increased beyond ₹ 50 lakh or its average annual turnover exceeds ₹ 2 crore.

(b) Private Company [Section 2 (68)]:

- A company which has the following features is a private company
 - (a) restricts the right to transfer its shares.
 - (b) except in case of OPC, a private company should have minimum 2 members and maximum 200 members.
 - (c) prohibits any invitation to the public to subscribe for any securities of the company'.
- The company can only except deposit for its members, directors or their relatives.
- Joint shareholders are counted as one member.
- It must add the words, 'Private Limited' at the end of its name.
- They are granted certain privilege and exemption under Companies Act, 2013 because not much public interest is involved in private companies.
- Company is required to file its annual accounts and returns to ROC (Registrar of Company) which can be accessed by any person by paying fees.

(c) Small Company:

- Such classification is based on size i.e. paid up capital and turnover.
- It means a company other than a public company whose:
 - (a) paid up capital does not exceeds ₹ 50 lakhs or such higher amount as may be prescribed which shall not be more than ₹ 5 crore.
 - (b) turnover as per last Profit and Loss A/c does not exceed 2 crore or such higher amount as may be prescribed, which shall not be more than ₹ 20 crore.
- **However nothing applies to:**
 - (a) holding company or subsidiary company.
 - (b) company registered under Section 8.
 - (c) company or body corporate governed by any special Act.

(d) Public Company [Section 2 (71)]:

- Public Company means a company which:
 - (a) is not a private company.
 - (b) has a minimum paid-up share capital of ₹ 5 lakh or such higher paid-up capital as may be prescribed.
 - (c) is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purpose of this act, and subsidiary of public Co. is also treated to be public company.
 - (d) should have minimum seven members and have no limit for maximum members.
- It requires minimum 7 members for its formation.
- Any member of public can acquire its shares/debentures.
- Its shares are capable of being dealt in stock exchange.

Amendment made by companies (Amendment) Act, 2015:

Provides that in Clause (71) the words "of ₹ 5 lakhs or higher paid up share capital" shall be omitted.

(III) On the basis of control:**(a) Holding and subsidiary companies:**

- When a company:
 - (a) controls the composition of board of directors, or
 - (b) exercises or controls more than one half of the total share capital either as its own or together with one or more of its subsidiary companies then, it is known as the holding company and the other company is the subsidiary company.

Total share capital for this purpose means the aggregate of:

 1. Paid-up equity share capital and
 2. Convertible Preference share capital.
 - Holding company shall not have layers of subsidiaries beyond prescribed limit.
- The expression "company" includes any body corporate.

- The word control includes:
 - (i) The right to appoint majority of the directors or
 - (ii) To control the management or
 - (iii) The policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly including by virtue of their shareholding or
 - (iv) Management rights or shareholders agreements or voting agreements or in any other manner.

(b) Associate Company:

- As per Section 2(6) "associate company" in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- Significant influence means control of at least 20% of total share capital or of business decisions under an agreement.

(IV) On the basis of access to capital:**(a) Listed Company:**

- Company listed on any of the recognised stock exchange.
- It is the company whose shares are traded on recognised stock exchange.

(b) Unlisted Company:

- Company except those listed on stock exchange i.e. company other than listed company.

(v) Other Companies:**(a) Government Company [Section 2 (45)]:**

- It is a company
 - (i) In which not less than 51% of the paid up share capital is held by
 - CG (Central Government)
 - SG (State Government)
 - Partially by CG and partially by SG.

- (ii) Which is a subsidiary of a Government Company.
 - Its auditor is appointed by the Comptroller and Auditor General of India (C&AG).
- (b) Foreign Company [Section 2 (42)]:**
 - Foreign company means any company or body corporate incorporated outside India which:
 - (a) has a place of business in India, whether by itself or through agent, physically or through electronic mode and;
 - (b) Conduct any business activity in India in any other manner. Thus, the companies doing business through electronic mode are also termed as foreign company and need to comply with specified provision.
- (c) Formation of Companies with charitable objects, etc. (Section 8 company):**
 - Licence may be granted by CG if the following conditions are satisfied:
 - (i) Company's object is to promote art, commerce, science, religion, charity or any other useful object.
 - (ii) Company applies its income in promoting its object.
 - (iii) Company prohibits payment of any dividend to its members.
 - It is not required to use the words 'Limited' or 'Private Limited' at the end of its name even though it is a limited company.
 - It shall enjoy all privileges and be subject to all obligations of limited company.
 - A firm may become its member.
 - Company can alter its object clause in MOA or AOA only by obtaining previous approval of CG in writing.
 - It can convert itself into company of any kind only after complying with the prescribed conditions.

- **Conditions for revoking licence by CG:**
 - (i) Company contravenes any of the requirements or any of the conditions subject to which a license was issued.
 - (ii) Its affairs are conducted fraudulently.
 - (iii) Its affairs are conducted in manner violative of company's objects, or
 - (iv) Prejudicial to public interest.
- **On revocation CG may also direct the company:**
 - to wound up, or
 - amalgamate with another company registered u/s 8, if it is in public interest.
- **On revocation of licence by CG:**
 - (i) Words 'limited' or 'Private Limited' shall be inserted at the end of company's name.
 - (ii) Company shall cease to enjoy exemptions granted by CG u/s 8
- Before revocation, CG shall give an opportunity of being heard to the company.
- (d) Dormant Company (Section 455):**
 - It is a company which is registered under Companies Act for future projects or to hold an asset or intellectual property and has no significant accounting transactions, and
 - It can make application to the Registrar in the manner prescribed and obtain the status of dormant company.
 - Significant accounting transactions are the transactions other than those mentioned below:
 - (i) Payment of fees to Registrar.
 - (ii) Payment under this Act or any other Act.
 - (iii) Allotment of shares in compliance with this Act.
 - (iv) Payment for office and record maintenance.
- (e) Nidhi Company:**
 - The main object of Nidhi Company is to cultivate the habit of cost cutting and saving amongst members.
 - Receiving deposits from, lending to its members for their mutual benefit in compliance with rules as prescribed by CG.

(f) Public Financial Institution:

- It is the institution –
- established or constituted by or under any Central or State Act or
- At least 50% of paid-up-share capital is held or controlled by CG or by SG or partly by CG and SG or by one or more SG.
- It includes –
 - + LIC established under Life Insurance Corporation Act, 1956.
 - + Infrastructure Development Finance Company Ltd.
 - + Institution notified by CG u/s 465.
 - + any other institution as notified by CG in consultation with RBI.

5. Mode of Registration/Incorporation of Company:

Promoters - It means a person:

- (a) who has been named as such in prospectus or is identified by the company in the annual return referred to in Section 92;
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise, or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to Act.

Provided that Sub-clause (c) shall not apply to a person who is acting merely in a professional capacity.

- A director/officer/employee who has control over the affairs of the company, directly or indirectly whether as a share holder, director or otherwise is considered as promotes.
- However, a director/officer/employee of the issuer or a person, if acting as such merely in his professional capacity, shall not be treated as a promoter.

Formation of Company:**Certain legal requirement to be fulfilled:**

- (i) There must be an association of persons.
- (ii) Minimum 2 person are required in case of private company, (one in case of OPC) and 7 persons in case of public company.
- (iii) Company must have a common object.
- (iv) Formalities of incorporation must be complied with.

Incorporation of Company:

1. Filing necessary document with the registrar of Companies. These include:
 - MOA and AOA signed by all subscribers.
 - Affidavit from each subscriber and persons names a first directors.
 - Proof of place of registered office.
 - Particulars of all subscribers.
 - Particulars of Directors along with Director Identification Number.
2. Issued of Certificate of Incorporation by Registrar of Companies containing Corporate Identity Number (CIN).
3. Preparation and maintenance of document and information at the registered office of the company for the period prescribed usually till the life time of company.
4. If at the time of registration, any person knowingly furnished any false or incorrect particulars which are of material nature, then such person shall be liable for fraud u/s 447.
5. If the company has been incorporated on the basis false documents or suppression of material facts, person named as first directors of the company and person making declaration shall be liable for fraud u/s 447.
6. If the company is incorporated in the manner as stated in Point No. 5, Tribunal may, on an applications made to it, on being satisfied that the situation so warrants:
 - Pass such order, as it may think fit, for regulation of the management of the company in public interest or interest of the company and its members, creditor.
 - Direct the liability of member to be unlimited.
 - Remove the name of company from the register of companies.
 - Pass such other order as it may deem fit; after providing reasonable opportunity of being heard and taking into consideration the transactions entered into by the company.

Simplified Proforma for Incorporating Company Electronically [SPICE]:

- A significance step is taken by MCA by introducing SPICE scheme vide MCA notification dated 01-10-2016.
- SPICE form is also introduced with a function to prepare e-MOA & e-AOA via this attribute there is no opportunity to prepare manual MOA & AOA.
- Form INC 32 under SPICE scheme is a single window form which can be used for multiple purposes such as:
 - (a) Application of DIN.
 - (b) Application of Name Availability.
 - (c) No need to file separate form for first director.
 - (d) Address of Registered Office of the proposed company.
 - (e) PAN/TAN application.

Effects of Registration:

- Company becomes a body corporate.
- It acquires legal recognition.
- It gets a name in which it will carry on its business.
- Its objects are laid down.
- Subscribers become the members of the company.
- Incorporation Certificate issued by Registrar of Companies is the conclusive evidence that:
 - (a) all the requirements of the act have been complied with in respect of registration and matters precedent and incidental thereto.
 - (b) association is a company authorised to be registered.
 - (c) association has been duly registered under Companies Act.

Relevant Case Laws:

- Hari Nagar Sugar Mills Ltd. V/s SS Jhunjhunwala.
- State Trade Corporation of India V/s Commercial tax officer.
- Spencer & Co. Ltd. Madras V/s CWT Madras (if company purchases all shares of another company is will not put an and on the corporate character of such other company).

- Heavy Electrical Union V/s State of Bihar:
 - If entire share capital of the company is contributed by CG and all shares are held by President of India, it does not make a company as agent either of the President or for CG.

6. Classification of Capital:**(i) Authorised (Nominal) Capital:**

It is the maximum amount of capital mentioned in the MOA of the company, which it can raise during its lifetime. It is also known as the registered capital in order to increase the limit of authorised capital, the memorandum of company should be altered.

(ii) Issued Capital:

It refers to that portion of authorised capital which has been offered to the public for subscription.

(iii) Subscribed Share Capital:

It refers to that part of the issued share capital which has been subscribed by the public. It also includes the issue of shares for consideration other than cash.

(iv) Called up Share Capital:

It is that portion of subscribed capital which the shareholders are called upon to pay. The amount remaining to be called up is called as the uncalled capital.

(v) Paid up Capital:

It is that portion of called up capital that is paid by the shareholders. The amount that is not paid is known as the calls in arrear. This is the actual capital of the company that is included in the Balance Sheet.

7. Shares:

- Shares means share in the share capital of the company.
- It can be said as "an existing bundle of rights and Liabilities".
- Share into which the total share capital is divided.
- Every person who contributes capital into the company gets a share in the company which represents his capital in the company.

Kinds of Share Capital:

Shares all of two types:

- (i) **Preference Shares**-A preference shareholder has following 2 rights.
- Preferential right as to payment of dividend - in case where a dividend is declared by the company.
 - Preferential right as to repayment of capital - in the event of winding up of the company.
- (ii) **Equity Shares** -These are the shares other than preference shares. These can be:
- with voting rights or
 - with differential rights as to dividend voting or otherwise in accordance with prescribed rules.

8. Memorandum of Association:

- It contains the constitution of the company.
- It is the first step in company's formation.
- As per Section 2 (56), "memorandum" means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any private company law or this Act.
- It not only shows the objects of formation but also determine the scope of its operations beyond which its actions cannot go.
- According to Palmer, "MOA is a document of great importance in relation to the proposed company".
- It is the charter of the company.
- It is the premise on which the whole foundations of the company stands.
- Forms of Memorandum are drawn as
 - Table A - Memorandum of company limited by shares.
 - Table B - Memorandum of company limited by guarantee and not having a share capital.
 - Table C - Memorandum of company limited by guarantee and having a share capital.
 - Table D - Memorandum of unlimited company.
 - Table E - Memorandum of unlimited company and having share capital.
- It contains six clauses which are known as the 'conditions of memorandum'.

(a) Name Clause:

- Contains the name of the proposed company.
- Name should not be undesirable.
- It should not be identical with the name of another company.
- It should not be prohibited one.
- It should end with words limited or Private Limited.
- It must be approved by ROC.

(b) Registered Office Clause:

- It contain the name of state in which the registered office is situated.

(c) Object Clause:

- It contains the objects to be pursued by the proposed company and other incidental and ancillary objects.

(d) Liability Clause:

- It is required by limited companies.
- It contains whether the liability of members is limited by shares, guarantee or both.

(e) Capital Clause:

- It is mandatory for every company.
- It states:
 - Number of Shares.
 - Nominal value of each share.
 - Total capital with which the company is to be registered.

(f) Association/Subsription Clause:

- MOA must be subscribed by at least 7 persons in case of public company and at least 2 persons in case of private company and 1 in case of OPC.
 - Every subscriber shall take at least one share in case of company limited by shares. The MOA should be signed by each subscriber also stating his address, description and occupation.
 - Particulars of every subscriber shall be witnessed.
- In case of OPC, name of person who is in the event of death of subscriber, shall become the member of company.
 - A company being a legal person can through its agent, subscribe to the memorandum.

- Minor cannot be a signatory to the memorandum as he is incompetent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in personal capacity.

9. Doctrine of *Ultra Vires*:

- It means beyond (their) powers.
- If any Act is done, which is though legal but is not authorised by the object clause of the MOA of the company or by the statute, it is said to be *ultra vires* the company and thus null and void.
- An Act that is *ultra vires* the company, cannot be ratified even by the unanimous consent of all the shareholders of the company.
- An Act which is *ultra vires* the directors, can be ratified by the members by passing a resolution at general meeting.
- An Act which is *ultra vires* the Articles of Association, can be ratified by amending the Articles after passing a special Resolution at a general meeting.
- An *ultra vires* contract can never be made binding on the company. It cannot become '*Intra vires*' by reason of estoppel, acquiescence, lapse of time, delay or ratification.

Relevant Case Law:

- Ashbury Railway Carriage and Iron Company Limited V/s Riche.
- The main object of the company were:
 - to make, sell or lend on hire, railway carriages and wagons;
 - to carry on the business of mechanical engineers and general contractors.
 - to purchase, lease, sell and work mines.
 - to purchase and sell as merchant or agents, coal, timber, metals etc.
- Directors of the company entered into a contract for financing the construction of railway line.
- Company ratified this act of directors by passing SR but however repudiate the contract being *ultra vires*.
- Other party brought an action for damages for breach of contract.
Held – the contract was null and void.

10. Articles of Association:

- As per Section 2(5) "AOA" means the articles of association of company as originally framed or as altered from time to time or applied in pursuance of any previous company law or Act.
- It contains the regulations relating to the internal management of the company.
- These rules and regulations are framed by the company for its own governance.
- It is also called as regulations or bye laws of the company.
- It is subordinate to and is controlled by MOA.
- In case of contradiction with AOA, MOA prevails.
- Public company limited by shares need not have its own articles. It can adopt Table F of Schedule I.
- Private company must register its own articles.
- Some of the important clauses are as follows:
Share capital and variation of rights, lien on shares, forfeiture of shares, directors, their appointment, accounts and audit, general meeting, share certificate, etc.
- **Forms of article include:**
 - Table F - Articles of Company limited by shares.
 - Table H - Articles of Company limited by guarantee.
 - Table G - Articles of company limited by guarantee having share capital.
 - Table I - Articles of an unlimited company having share capital.
 - Table J - Articles of an unlimited company not having share capital.
- The articles play a part that is subsidiary to the memorandum of association.
- The articles govern the way in which the object of the company are to be carried out and can be framed and altered by the members.
- It must be within the limits marked out by the memorandum and the Companies Act.
- It must be printed, divided into paragraphs, numbered consecutively stamped adequately, signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum.

Difference between Memorandum of Association and Articles of Association:

	Basis	Memorandum of Association	Articles of Association
1.	Objective	It defines the objectives of the company.	It lays down the rules and regulations for internal management of the company.
2.	Position	It is the main/primary document of the company.	It is the subsidiary/secondary document and is subordinate to MOA.
3.	Relationship	It defines the relationship of company with the outside world.	It defines the relationship between the company and its members.
4.	Validity	Acts beyond MOA are invalid/ <i>ultra vires</i> and cannot be ratified even by unanimous votes of the members.	Acts beyond AOA can be ratified by members by passing Special Resolution and altering AOA.
5.	Alteration	It can be altered only under certain circumstances and in the manner provided for the act.	It can be altered simple by passing special resolution at the general meeting.

11. Doctrine of Indoor Management:**Doctrine of Constructive Note:**

- Since memorandum and article is a public document so it is considered that every person dealing with the company is deemed to have notice of the content of memorandum and articles of the company.

- It is presumed that person have not only read these documents but also have understood their proper meaning.
- Any person can now inspect the documents kept by registrar by way of electronic means on payment of prescribed fees.
- If a person enters into a contract with the company which is beyond the power of company as defined in MOA, or outside the authority of directors as per MOA/AOA, he cannot acquire any right under the contract against the company.

Doctrine of Indoor Management:

- It is an exception to the Doctrine of constructive notice.
- It protects the outsiders against the company, who acted in good faith.
- According to this doctrine, a person who deals with the company in not bound to enquire into the regularity of the internal procedures of the company.
- Contracting party may assume that every act is done in accordance with the procedures laid down in the articles of the company and hence not affecting adversely the rights of the outside parties in any manner due to irregularity of internal procedures.
- It is popularly known as Turquand Rule

Relevant Case Law:

- The Royal British Bank V/ Turquand.
- Turquand, a Co. had a clause in its constitution that allowed the company to borrow money once it had been approved by shareholders by passing a resolution at general meeting.
- Turquand entered into a loan with the Royal British Bank and two of the directors signed and attached the company seal on the loan agreement.
- Loan however was not been approved by the shareholders.
- Company defaulted in repayment of loan and bank sought restitution.

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- Company refused to repay the loan claiming that directors had no right to enter into such agreement.
- It also claimed that bank had constructive notice of the shareholders approval clause in their constitution.
Held: Royal British bank could enforce them. Bank could not be deemed to know or look into the company's internal workings.

Exceptions to the Doctrine of Indoor Management:

- (a) In case of Actual or Constructive knowledge of irregularity.

Case Laws:

1. Howard V/s Patent Ivory Manufacturing Co.
2. Morris V/s Kansseon.

- (b) In case where person dealing with the company has suspicion of irregularity or have behaved negligently.

Case Laws:

1. Anand Bihari Lal V/s Dinshaw & Co.
2. Haughton & Co. V/s Nothard, Lowe & Wills Ltd.

- (c) In case of forgery

Case Law:

1. Ruben V/s Great Fingall Consolidate.

SHORT PRACTICE QUESTIONS

1. Define Company. Explain and five characteristic of the company.
2. Write short notes on:
 - (a) Lifting of corporate veil
 - (b) One Person Company
 - (c) Small Company
 - (d) Associate Company
 - (e) Doctrine of constructive notice.
 - (f) SPICE

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3. Differentiate between
 - (a) Private Company and Public Company
 - (b) Authorised Capital and Issued Capital
 - (c) Preference Shares and Equity Shares
 - (d) Memorandum of Association and Article of Association
4. Explain the process of incorporation of the company:
5. What is 'share'. Also explain its types
6. Define Doctrine of Indoor management. Also state its exceptions.

PAST YEAR QUESTIONS AND ANSWERS

DESCRIPTIVE QUESTIONS

2018 - May [5] (b) Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under section 8 or a private company? (6 marks)

Answer:

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

Rules Regarding its Membership:

1. Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a OPC/shall be a nominee for the sole member of a OPC.
2. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
3. No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
4. OPC is a private company in nature.
5. OPC cannot be incorporated or converted into a company under section 8 of the Act i.e. a non-profit company.

6. OPC may be converted to private or public companies in certain cases.
7. Such companies cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.

2018 - May [6] (c) State the limitations of the doctrine of indoor management under the Companies Act, 2013. (3 marks)

Answer:

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

2018 - Nov [5] (b) There are cases, where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate. (6 marks)

Answer:

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

1. **To determine the character of the company i.e. to find out whether company is an enemy or friend :**
In the law relating to trading with the enemy where the list of control is adopted.
2. **To protect revenue / tax :**
In certain matters concerning the law of taxes duties and stamps particularly where question of the controlling interest is in issue.
3. **To avoid a legal obligation :**
Where it was found that the sole purpose for the formation of the Company was to use it as a device to reduce the amount to be paid by way of bonus to workmen.
4. **Formation of subsidiaries as agents :**
A company may sometimes be regarded as an agent or trustee of its members, or of another company and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

5. **Company formed for fraud / improper conduct or to defeat law :**
Where the device of incorporation is adopted for some illegal or improper purpose e.g. to defeat or circumvent law, to defraud creditors or to avoid Legal obligations.

2019 - June [5] (b) What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act 2013? Mention the conditions of the issue and revocation of the licence of such company by the government. (6 marks)

Answer:

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to:

- promote the charitable objects of commerce, art, science, sports, education, research, social, welfare, religion, charity, protection of environment, etc. Such company intends to apply its profits in
- promoting its objects and
- prohibiting the payment of any dividend to its members.

Examples of section 8 companies are ASSOCHAM, FICCI, NATIONIA SPORTS CLUB of INDIA, etc.

Powers of Central Government to issue licence :

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

Revocation of license:

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

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Before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

On revocation of the licence, the Registrar shall put 'limited' or 'private limited' against the name of the company in its register.

2019 - Nov [5] (b) "The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association. (6 marks)

Answer:

The Memorandum of Association of company is in fact its charter, it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

It defines the scope of the companies activities and its relations with the outside world. It is the charter of the company. It contains the objects to pursue which the company is formed. It lays down the scope of operations beyond which company cannot go.

Contents of Memorandum:

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

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- (f) **Association Clause:** It states the desire of the subscribers to be formed into a company. The Memorandum shall conclude the association clause. Every subscriber to the memorandum shall take atleast one share, and shall write against his name, the number of shares taken by him

PRACTICAL QUESTIONS

2018 - May [1] (b) Ravi Private Limited has borrowed ₹ 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.? (4 marks)

Answer:

When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultra-vires the company, and hence null and void. This is known as "Doctrine of ultra-vires".

The impact of the doctrine of ultra-vires is that a company can neither be sued on an ultra-vires transaction, nor can sue on it. If you enter into a transaction which is ultra-vires the company, you cannot enforce it against the company.

If you have lent money to the company on such a transaction, you cannot recover it from the company. But, if the money has not been expended, then lender may bring an injunction order on the Co. to stop it from parting from it. This is because company does not becomes owner of it. However, if the money has been used, then lender slips into the shoes of the debtor paid - off and consequently can recover his loan to that extent.

In the given case, the transaction is ultra-vires and hence the company Ravi Private Limited is not liable to pay the debt. Mudra Finance Ltd. may bring injunction order on Ravi Pvt. Ltd. to stop it from parting with the funds.

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2018 - Nov [1] {C} (b) A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly. (4 marks)

Answer:

According to the facts of this case there exists a situation in which certain members of a Section 8 company have approached a person for seeking relevant and informed advice on the amount of dividend that can be distributed amongst them from the pool of profits made over a financial year by a company registered under Section 8.

The first and foremost thing in this case that such members need to be educated about is the definition and objects of a Section 8 company which clearly states that " a Section 8 company is formed to promote the charitable object of commerce, art, science, sports education, research, social welfare, religion, charity, protection of environment, etc, and a section 8 company intends to apply its profit in - (1) promoting its objects (2) - prohibiting the payment of any dividend to its members.

Now when it is clearly evident that a section 8 company is not statutorily bound to pay dividends to its members unlike a public or private company then automatically the demand of the members for dividend stands invalid and cannot be enforced on the company.

2018 - Nov [6] (c) Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC

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Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company.

Analyse the situation and decide whether Mr. X is free from his liability.

(3 marks)

Answer:

In this case according to the facts provided it is clearly observable that the situation points towards the applicability of the Doctrine of Indoor Management in relevance to the affairs of the company M/s ABC Limited.

According to the terms of the Doctrine of Indoor Management if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. Here in this case if we view the facts from the perspective of applicability of the Doctrine.

2019 - June [1] (b) Sound Syndicate Ltd. a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd. a non banking finance company for a loan ₹ 25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not ? (4 marks)

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Answer:

As per the doctrine of Indoor Management, outsiders are entitled to assume that all the detailed formalities for doing an act authorised by the articles, have been observed. Outsider, is not at all required to inquire into the internal affair of the company. In case of The Royal British Bank Vs. Turquand, this doctrine was clearly explained. The bond signed by the director and secretary on behalf of the company, was held to be valid and bank was not required to inquire whether any ordinary resolution was passed or not. This is the Indoor Management rule, that the company's indoor affair are company's problem.

In the given case, the articles of the company, authorise the director to borrow on behalf of the company. Mr. Liddle a director borrowed money but, later on company denied its liability to repay on the pretext that no resolution was so passed and lender should have enquired about the same prior to providing the loan.

Held, the contention of Sound Syndicate Ltd. is not correct, as the outsider is not obligated to enquire into the internal affair of the company.

2019 - June [6] (c) Popular Products Ltd. is company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. And Happy products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products Ltd; Cheerful products Ltd. Can Jovial Ltd., be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer. (3 marks)

Answer:

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

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- (i) Controls the composition of the Board of Director; or
- (ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

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

2019 - Nov [1] {C} (b) Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about ₹ 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so? (4 marks)

Answer:

As per Companies Act, 2013 a OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

In the given case Mr. Anil formed OPC on 16th April, 2018 and turnover for first financial year ending is about ₹ 2.25 crore. He wants to voluntarily convert it into a private limited company.

Held, Mr. Anil can do so as the threshold limit of turnover is crossed, thus the OPC can be converted into Private Limited Company even before expiry of two years from incorporation.

2019 - Nov [6] (c) A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed? (3 marks)

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Answer:

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

Thus, A cannot be regarded as separate from the private limited company he formed.