CA FOUNDATION

BUSINESS LAWS

CASE STUDY BASED QUESTIONS & ANSWERS

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1	Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following: a. The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance. b. The telegram of revocation and letter of acceptance both reached together. ***Answer*** The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions: a. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid. b. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
2	Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of ` 20, 000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid? ***Answer*** In India, consideration may proceed from the promise or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, 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 a contract. In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to the enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were

	executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it. Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.
3	A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contact Act, 1872? ***Answer*** Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. In the present case, it is an implied contract and R must pay for the services of the coolie.
4	Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ` 6,00, 000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872. ***Answer*** As per section 43 of the 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 any one or more of such joint promisors to perform the whole of the promise. Each of two or more joint promisors 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. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in the instant case, Sanjay is entitled to receive ` 50,000 from Vijay's assets and ` 2,75,000 from Ajay.
5	Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period

	of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH. Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period. ***Answer*** In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Referring to the above provision, we can analyse the situation as under. The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the Motor Car. Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.
6	Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sale his motor car for Rs. 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying Rs. 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. ***Answer*** As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

	Exception- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.
7	Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872. Answer Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of ***Balfour v. Balfour***. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs. 1 lakh from father for the reasons explained above.
8	'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ` 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ` 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ` 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. ***Answer*** Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. The leading case on this point is "***Hadley v. Baxendale***" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would

	reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated. The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' Rs. 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'. If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be Rs. 750/- (i.e. 1000 water bottles x 0.75 paise).
9	X, Y and Z are partners in a firm. They jointly promised to pay ` 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. ***Answer*** As per section 43 of the 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 any one or more of such joint promisors to perform the whole of the promise. Each of two or more joint promisors 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. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. In the instant case, X, Y and Z jointly promised to pay ` 3,00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive ` 20,000 from Y's estate, and ` 1,40,000 from Z.
10	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. ***Answer***

	Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non- performance of the contract must be taken into account. Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ` 1.25 lakh (i.e. ` 12.75 minus ` 11.50 = ` 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date. Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.
11	Ram invites Madhuri (a well-known film actress) to his daughter's engagement and dinner party. Madhuri accepts the invitation and promised to attend. Ram made special arrangements for Madhuri at the party but she did not turn up. Ram enraged with Madhuri's behaviour, wanted to sue for the loss incurred in making special arrangements. Ram is seeking your advice. ***Answer*** No. 'Ram" cannot sue 'Madhuri' for his loss. Because the agreement was a kind of social nature and lacked the intention to create legal relationship.
12	State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872: "J takes a seat in public bus" ***Answer*** As per Section 9 of the Indian Contract Act, 1872, in this case there is an implied offer to public at large by the transport company to carry passengers from one destination to another. When J takes a seat in the bus, there is an implied acceptance of the offer on his part, and there comes into existence a valid contract. *"J tells M that N has expressed his willingness to marry her (M)".*

	"J tells M that N has expressed his willingness to marry her (M)". ***Answer*** In the instant case, there is no contract as the essential element of communication of offer by one party and its acceptance by the other party is missing. "J bids at a public auction" ***Answer*** Bidding at a public auction just amounts to an offer by the bidder and till it is accepted by the auctioneer by some customary method, as fall of hammer, no concluded contract comes into existence. "J puts three one rupee coins in the slot of a platform ticket vending machine at the Railway Station" ***Answer*** In this case there comes into existence a valid contract as soon as J puts three one rupee coins in the slot of the ticket vending machine. This amounts to acceptance on the part of J, of an implied offer by the owner of the ticket vending machine.
13	Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide. ***Answer*** The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [Fisher V. Bell (1961) Q.B. 394 Pharmaceutical society of Great Britain V. Boots Cash Chemists].

14	A sends an offer to B to sell his second-car for ` 40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week? ***Answer*** Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance. The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract. (Ramsgate Victoria Hotel (v) Montefiore).
15	Examine what is the legal position, as to the following: i. M offered to sell his land to N for ` 28,000/-. N replied purporting to accept the offer and enclosed a cheque for ` 8,000/-. He also promised to pay the balance of ` 20,000/- in monthly installments of ` 5,000/- each. ii. A offered to sell his house to B for ` 10000/-. B replied that he can accept the house for only ` 8,000/-. A rejected B's counter offer to buy the house for ` 8,000/-. B later changed his mind and is now willing to buy the house for ` 10,000/-. ***Answer*** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems: i. It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of Neale vs. Merret [1930] W.N 189, where M offered to sell his land to N for ` 28,000/-. N replied purporting to accept the offer but enclosed a cheque for ` 8,000/- only. He promised to pay the balance of ` 20,000 by monthly installments of ` 5,000. It was held that N could not enforce his acceptance because it was not an unqualified one. ii. This problem is similar to the facts of Union of India v. Bahulal (AIR 1968 Bombay 294) case, wherein A offered to sell his house to B for ` 10,000/-, to which B replied that, "I can pay ` 8,000 for it". Consequently, the offer of 'A' is rejected by 'B' as the acceptance is not unqualified. But when B later changes his mind and is prepared to

	pay ` 10,000/-, it becomes a counter offer and it is up to A whether to accept it or not.
16	X offered to sell his house to Y for ` 50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which reached X before the E-mail. Is the revocation of acceptance valid? Would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time? ***Answer*** Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance (E- mail) and the Fax of revocation of acceptance reach X at the same time, the formation of contract will depend on the fact that which of the two is opened first by X. If X reads the Fax letter first, revocation is valid but if he reads the E-mail first, revocation is not possible.
17	Mr. U offered to sell his house to Mr. X for ` 15,00,000. Mr. X accepted the offer by post. On the very next day Mr. X sent a telegram revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time? ***Answer*** Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer. Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions (i) Yes, the revocation of acceptance by Mr. X (the acceptor) is valid. (ii) If Mr. U opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
18	"Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum". ***Answer***

	A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.
19	Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of ` 2, 000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise to B and executed in his favour an agreement to give effect to the stipulation. A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of A is valid? ***Answer*** Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d) "…. the promisee or any other person…..", it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs. Ramayya (1882) 4 Mad 137., held that the consideration can legitimately move from a third party and it is an accepted principle of law in India. In the given problem, Mr. Singh has entered into a contract with A, but Mr. B has not given any consideration to A but the consideration did flow from Mr. Singh to A and such consideration from third party is sufficient to the enforce the promise of A, the daughter, to pay an annuity to B. Further the deed of gift and the promise made by A to B to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it. Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it.
20	X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ` 5,000 per month to N (the sister of the executor). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N. ***Answer***

	As per Section 2 (d) of the Indian Contract Act, 1872, in India, it is not necessary that consideration must be supplied by the party, it may be supplied by any other person including a stranger to the transaction. The problem is based on a case "Chinnaya Vs. Ramayya" in which the Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person. In the given problem, the same reason applies. Hence, M is liable to pay the said sum to N and cannot deny her liability on the ground that consideration did not move from N.
21	A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher? ***Answer*** Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.
22	Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of ` 1 lakh from Suresh for the payment of his college fee and agreed to pay by 30th May, 2012. Ramesh possesses assets worth ` 10 lakhs. On due date Ramesh fails to pay back the loan to Suresh. Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. ***Answer*** According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus Ramesh who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose 1903, 30 Cal, 539 (PC)]. Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity. Thus, according to the above provision, Suresh will be entitled to recover the amount of loan given to Ramesh for payment of the college fees from the property of the minor.

23	What is meant by 'Undue Influence'? 'A' applies to a banker for a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide. ***Answer*** Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other. A person is deemed to be in that position: a. where he holds real or apparent authority over the other or stands in a fiduciary relation to him; b. where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress. c. where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position. When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of under influence would not be raised. In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.
24	Do the following statements amount to involvement of fraud? i. Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep. ii. X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the

	untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud? ***Answer*** i. The problem is based on the facts of the case Bisset vs Wilkinson (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud. ii. The problem is based on the facts of the case Smith vs Chadwick (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.
25	Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons. ***Answer*** According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present: 1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true. 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice. 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [Long v. Lloyd, (1958)].
26	M purchased a wrist watch from N, both believed that it was made with gold plaque. Hence, M paid a very high price for that. Later it was found that the wrist watch was not made so. State the validity of the contract. ***Answer*** The contract is absolutely void as there is a mutual mistake of both parties. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per Section 20 of the Indian Contract Act, 1872.

27	X buys from Y a painting which both believe to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy .Discuss the validity of the contract? ***Answer*** The contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab initio, as per section 20 of the Indian Contract Act, 1872.
28	Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ` 5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872. ***Answer*** The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. A void agreement is one without any legal effect. Thus any agreement in restraint of trade, marriage, legal proceedings etc., are void agreements. Thus Mr. X cannot recover the amount of ` 5 lakhs promised by Mr. Seth because it is an illegal agreement and cannot be enforced by law.
29	'X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practising at Ludhiana. It was also agreed that during the term of agreement 'X' will not practise on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? ***Answer*** An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. Therefore X can be restrained by an injunction from practicing on his own account in Ludhiana.

30	M promised to pay N for his services at his (M) sole discretion found to be fair and reasonable. However, N dissatisfied with the payment made by M and wanted to sue him. Decide whether N can sue M under the provisions of the Indian Contract Act, 1872? ***Answer*** N's suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract. As per section 29 of the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void".
31	A received certain goods from B promising to pay ` 10,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays `, 6000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ` 10000/-. Can B do so? Advise. ***Answer*** As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. Therefore B can sue A only for ` 4000.
32	X, Y and Z jointly borrowed ` 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether: i. Y can recover the contribution from X and Z, ii. Legal representatives of X are liable in case of death of X, iii. Y can recover the contribution from the assets, in case Z becomes insolvent. ***Answer*** Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes

	default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections, i. Y can recover the contribution from X and Z because XYZ are joint promisors. ii. Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him. iii. 'Y' also can recover the contribution from Z's assets.
33	Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay ` 1,50,000/- to 'A'. Later-on, 'F' became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'. **OR** 'A', 'B' and 'C' are partners in a firm. They jointly promise to pay ` 1,50,000 to 'P'. C became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. A is compelled to pay the whole amount to P. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which A can recover the amount from B. ***Answer*** The legal liability of a joint promisor, joint promisee and other connected issues are set out in Sections 42, 43 and 44 of the Indian Contract Act, 1872. In terms of section 42 of the Act "When two or more persons have made a joint promise then unless a contrary intention appears from the contract, all such persons, during their joint lives, and after the death of any one of them, his representative jointly with the survivor or survivors and after the death of the last survivor, representatives of all jointly must fulfill the promise". Further, the promisee can enforce his right against any one of the joint promisor and if he does so then the rights and duties of the other promisors is to make contributions. In terms of section 43 of the Act, (i) when two or more persons make joint promise, the promisee can compel any one of the joint promisors to perform the whole of promise. (ii) in the above situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary. Section 44 of the Act, states that in the matter of release of one of the joint promisors, it must be understood that such a release does not discharge other joint promisors nor does the released joint promisor would stand released to other joint promisor or promisors. Hence, in the instant case, D, E and F who are partners in a firm, jointly promised to pay ` 1,50,000/- to A. Later on, F became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt i.e. ` 10,000/- (1/5th of ` 50,000/-) (Amount to be contributed by F is ` 50,000/- (1/3rd of ` 1,50,000/-). A recovers the whole amount from D through a legal action.

	Here, D is entitled to receive a. From F's assets: ` 10,000/- b. From E : ` 70,000/- (` 50,000/- being his own share + ½ (50,000 – 10,000) i.e. ` 20,000/- being one half share of total loss of ` 40,000/- due to F's insolvency). Thus, in the above case, under the provisions of the Indian Contract Act, 1872, D can recover ` 70,000/- from E.
34	Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ` 60, 000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise. ***Answer*** According Section 43 of the Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Further, if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Sanjay is entitled to receive 5,000 from Vijay's assets and 27,500 from Ajay.
35	Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872. ***Answer*** According to Section 56 (Para 2) of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case. The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington; Jacobs V Credit Lyonnais). In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

36	M owes money to N under a contract. It is agreed between M, N and O that N shall henceforth accept O as his debtor instead of M. Referring to the provisions of the Indian Contract Act, 1872, state whether N can claim payment from O? ***Answer*** Yes, a contract need not be performed when the parties to it agree to substitute a new contract for it or to rescind or alter it. (Section 62, Indian Contract Act, 1872). Here, in the given problem, novation has taken place as one of the parties has been replaced with a third party. Therefore, N can claim the money from O.
37	Explaining the provisions of the Indian Contract Act, 1872, answer the following: i. A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability? ii. C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability? ***Answer*** i. According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B omits to supply the timber. Hence C is discharged from his liability. ii. According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.
38	Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at ` 300 per shirt to be supplied on or before 31st December, 2004. However, on 1st November, 2004 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto ` 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard ***Answer*** In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2004 itself when it has time upto 31st December 2004 for performance of the contract of supply of goods. It is therefore called anticipatory breach of

	contract. Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2004, without waiting upto 31st December 2004. The damages will be calculated at the rate of ` 50 per shirt i.e. the difference between ` 350/- (the price prevailing on 1s1 November) and ` 300/- the contracted price.
39	Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urid Dhall on 10.11.2006 at a contracted price of ` 40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid Dhall was sky rocketing to ` 50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to ` 53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position. ***Answer*** The stated problem falls under the head 'anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872. The case law applicable here is Frost vs. Knight. As per details in the problem, price as contracted ` 40 per kg on 10.11. 2006 rose to ` 50 per kg as on 4.12.2006 and finally to ` 53 per kg, on 09.12.2006.
40	X agreed to sell to Y 100 bags of price @` 500 per bag, the entire price to be paid at the time of delivery. Before it is delivered, the price of rice per bag goes up by ` 50 per bag, X refuses to deliver unless and until Y agrees to the increased price. Y sues X for damages for the breach of contract. What Y can claim as damages? **Answer** In a Contract of sale of Goods, the damages for the breach of contract is measured by the difference in contract price and market price of the goods on the date of breach. In this problem Y can claim ` 50 per bag (` 550-500) as ordinary damages.
41	X, a minor was studying M.Com. in a college. On 1st July, 2005 he took a loan of ` 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth ` 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of the Indian Contract Act, 1872 decide whether B would succeed. ***Answer*** Yes, B can proceed against the assets of X. According to section 68 of the Indian Contract Act, 1872 "If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries 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." Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

42	Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid ? ***Answer*** Yes, X is bound to make good to Y the amount so paid. Section 69 of the Indian Contract Act, 1872, provides 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. In the given case Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X.
43	Z rent out his house situated at Mumbai to W for a rent of ` 10,000 per month. A sum of ` 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z. ***Answer*** Section 69 of the Indian Contract Act, 1872 provides 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". In the given problem W has made the payment of lawful dues of Z in which W had an interest. Therefore, W is entitled to get the reimbursement from Z.

1	Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930? ***Answer*** A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)] "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)] "A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated". [Sub-section (3)] Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)] In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car. Ram is therefore entitled to reject the car and have refund of the price.
2	Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer. Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. ***Answer*** As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction; (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. *Referring to the above provisions, we can analyse the situation given in the question.*

	Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.
3	Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent? ***Answer*** Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provides that in a contract for the sal e of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose. Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly. a. Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated. b. Where the bales have not been selected with the consent of buyer's representatives. In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.
	Mr. D sold some goods to Mr. E for ` 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. ***Answer*** 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. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act,1930 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. As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under: i. **Suit for price (Section 55):** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price. ii. **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies. iii. **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

1	Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. ***Answer*** It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are: 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. The test of good faith includes: a. that the expulsion must be in the interest of the partnership; b. that the partner to be expelled is served with a notice; and c. that the partner has been given an opportunity of being heard. Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.
2	A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B wil l be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement? ***Answer*** According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner. The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party: 1. The third party knows above the restrictions, and 2. The third party does not know that he is dealing with a partner in a firm.

	Now referring to the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role. M also is not aware that he is dealing with a partner in a firm. Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm. But in the second situation, if M was having knowledge about the agreement, he cannot recover money from the firm.
3	A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide: i. Whether the Firm's contention shall be tenable? ii. What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware? ***Answer*** The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [Sub-Section (1) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership. Considering the above provisions and explanation, the questions as asked in the problem may be answered as under: i. The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods. ii. In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm. In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

4	X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? ***Answer*** A partner may not be expelled from a firm by 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 in bonafide interest of the business of the firm. The test of good faith as required under Section 33(1) 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. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

1	ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end? ***Answer*** ***Death of all members of a Private Limited Company, Under the Companies Act, 2013***: The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s). The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change. In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law. Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.
2	The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the purpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs. The members of the company convened an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advice them. ***Answer*** The meaning of the term ultra vires is simply" 'beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection.

	Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.
3	FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited. Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013. ***Answer*** As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited. Hence, the order of NCLT will be legal. Before making any order,— a. the company shall be given a reasonable opportunity of being heard in the matter; and b. the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
4	Krishna, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Krishna as a pretended loan. This way, Krishna divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded. ***Answer*** The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain

	circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee. 1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company. 2. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.
5	Ravi Private Limited has borrowed ` 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.? ***Answer*** As per the facts given, Ravi Private Limited borrowed ` 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum. **Remedy available to the Mudra Finance Ltd.:** The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, a company which deals with the other, is deemed to know about the powers of the company. So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.
6	Some of the creditors of Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the

	meaning of corporate veil and when the promoters can be made personally liable for the debts of the company. ***Answer*** After incorporation, the company in the eyes of law becomes a different person from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though they hold the entire share capital of the company. This recognition of the company as a separate legal entity and being liable for its own acts and liabilities is known as the "Corporate Veil". However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company. The **Salomon Vs. Salomon and Co Ltd.** laid down the foundation of the concept of corporate veil or independent corporate personality. In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company. (i) To determine the character of the company i.e. to find out whether co-enemy or friend (ii) To protect revenue/tax: (iii) To avoid a legal obligation (iv) Formation of subsidiaries to act as agents (v) Company formed for fraud/improper conduct or to defeat law
7	Fortune Traders Ltd. was registered as a Public Company. There are 264 members in the Company as stated below: (i) Directors and their relatives 134 (ii) Employees 100 (iii) Ex-employes (shares were allotted when they were employees) 15 (iv) 5 couples holding shares jointly in the names of husband and wife (5X2) 10 (v) Others 5 **Total number of members 264** The Board of Directors of the company proposes to convert it into a Public company. Only because of the fact that its member has exceeds minimum prescribed criteria. Advise the Board of directors? ***Answer*** "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,— ○ restricts the right to transfer its shares; ○ except in case of One Person Company, limits the number of its members to **two hundred**:

	○ prohibits any invitation to the public to subscribe for any securities of the company; Explanation to the limit of members of 200: ○ where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: ○ persons who are in the employment of the company; and ○ persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, **shall not be included in the number of members**; Contention on part of BOD is ***incorrect***,-since total no of members are 144 only 1. Directors = 134 2. Employees = Nil 3. Ex-Employees = Nil 4. 5 Couples = 5 5. Others = 5 Total = 144
8	Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares. ***Answer*** According to Section 46(1) of the Companies Act, 2013, a share certificate once 13issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares. However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. Similarly any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller. Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received *(Barton v. North Staffordshire Railway Co. 38 Ch D 456)*.

	In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z' have any rights against the company even though they are bona fide purchasers. However, since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.