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## OFFER AND ACCEPTANCE

<b>QUES-1</b>	<p>1. State which of the following agreements are valid contract under the Indian Contract Act, 1872?</p> <p>(a) A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.</p>
<b>Ans</b>	<p>Section 10 of Indian Contract Act, 1872 laid down the essential elements of a valid contract. One of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarifies "two or more persons are said to consent when they agree upon the same thing in the same sense"</p> <p>A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.</p>
<b>QUES-2</b>	<p>Ashwin goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of ` 40,000 after a discount of ` 3000. Ashwin reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ` 43,000." Ashwin got angry and insists for ` 40,000. State with reasons whether under Indian Contract Act, 1872, Ashwin can enforce the cashier to sell at discounted price i.e. ` 40,000. (4 Marks)</p>
<b>Ans</b>	<p>According to the Indian Contract Act, 1872 a Contract come into existence when an offer is accepted, and all other essential elements of valid contract in Sec 10 are present. Therefore it should be noted that there is a difference between Invitation to offer and offer. Offer is the final expression of the willingness of the person, he agrees to be bound by it, if the other party accepts it. But in invitation to offer the party is inviting the other party to make an offer.</p>



	<p>An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.</p> <p>In the instant case, Ashwin reaches to super market and selects a Air Conditioner with a discounted price tag of ` 40,000 but cashier denied to sell at discounted price by saying that discount is closed from today and request to make full payment. But Ashwin insists to purchase at discounted price.</p> <p>On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashwin who is making the offer not the super market. Cashier has right to reject the Ashwin's offer. Therefore, Ashwin cannot enforce cashier to sell at discounted price.</p>
<p><b>QUES-3</b></p>	<p>A Company advertised in several newspapers that a reward of £ 100 would be given to any person who contracted influenza after using the smoke balls of a company according to its printed directions - One Mrs. Carlil used the smoke balls according to its printed directions but contracted influenza. But the Company denied to pay for the goods that the acceptance was not communicated. Is the Co's views correct?</p>
	<p>According to Indian Contract Act,1872 it is a general offer made to the public in general and hence anyone can accept and do the desired act. Communication of an acceptance is not required in case of a general offer.</p> <p>In the present case ,a company advertised in several newspapers that the reward of £ 100 would be given to any person who contracted influenza after using the smoke balls of a company according to its</p>



	<p>printed directions .Mrs. Carlil used the smoke balls according to its printed directors but contracted influenza.</p> <p>Thus, she could recover the amount as by using the smoke balls she had accepted the offer. In case of general offer it is not necessary to communicate the acceptance.</p>
<b>QUES-4</b>	<b>Explain Briefly the Modes of Revocation of Offer?</b>
<b>QUES-5</b>	<p>Mr. B makes a proposal to Mr. S by post to sell his house for ` 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.</p> <p>Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020. Examine with reference to the Indian Contract Act, 1872:</p> <ol style="list-style-type: none"><li>1. On which date, the offer made by Mr. B will complete?</li><li>2. Discuss the validity of acceptance.</li></ol> <p>What would be validity of acceptance if letter of revocation and letter of acceptance reached together?</p>
	<p>According to Section 4 of the Indian Contract Act, 1872, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".</p> <p>When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.</p> <p>In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.</p>



1. Thus, the offer made by Mr. B will complete **on the day when Mr. S reads the letter, i.e. 13th April 2020.**

2. **When communication of acceptance is complete:** Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be **complete as against the proposer** when the letter of acceptance is posted and **as against the acceptor** when the letter reaches the proposer.

Revocation of Acceptance: The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, **if the revocation telegram** arrives before or **at the same** time with the letter of acceptance, **the revocation is absolute.**

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.

3. It will not make any difference even if the telegram of revocation and letter of acceptance would have reached **on the same day, i.e. the revocation then also would have been absolute.** As per law, acceptance can be revoked anytime before the communication of acceptance is complete. **Since revocation was made before the communication of acceptance was complete** and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

**QUES-6**

**Mr. and Mrs. Merritt married in 1941. They held their matrimonial home in joint names. In 1966 Mr. Merritt left the family home to live with**



	<p>another woman. Mr. Merritt agreed to pay Mrs. Merritt Rs.4000 per month. At Mrs. Merritt's request, he signed a document confirming that when she had repaid the balance on the mortgage, he would transfer the matrimonial home into her sole name. Mrs. Merritt paid off the mortgage and successfully acquired a declaration that the house belonged to her. Mr. Merritt appealed against it. Advise Mrs. Merit</p>
<b>Ans</b>	<ol style="list-style-type: none"><li>1. Mr. Merritt's appeal was unsuccessful.</li><li>2. When parties are in the process of separating, or are separated, the presumption of there being no intention to create legal relations <b>does not apply</b>.</li><li>3. The arrangement was sufficiently <b>certain to be enforceable</b>, and the paying of the mortgage was ample consideration for Mr. Merritt's promise. Mrs. Merritt was entitled to <b>the matrimonial home entirely</b>.</li></ol>
<b>QUES-7</b>	<p>Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited ` 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872. Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha?</p>
<b>Ans</b>	<p>As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts. In the instant case, Radha cannot sue her three friends for</p>





	<p>the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship. <b>If the said party organised by Radha had been a "Contributory 2023 New year celebration party",</b> then Radha could have sued her three friends for the loss incurred in the said party <b>as the agreement between her and her friends would have legal backing;</b> on the basis of which Radha deposited the advance amount and the parties here <b>intended to create legal relationship.</b></p>
<b>QUES-8</b>	<p>X agrees to pay Y ` 1,00,000/-, if Y kills Z. To pay Y, X borrows ` 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.</p> <ol style="list-style-type: none"><li>I. Between X and Y.</li><li>II. Between X and W</li></ol>
<b>Ans</b>	<p><b>Illegal Agreement:</b> It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void. In the present case,</p> <ol style="list-style-type: none"><li>I. X agrees to give ` 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.</li><li>II. X borrows ` 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.</li></ol>
<b>QUES-9</b>	<p>Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 for ` 25 lakhs. The Property papers mentioned a</p>



	<p>condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.</p> <p>Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?</p>
<p><b>Ans</b></p>	<p>Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can <b>flow from the promisee or any other person</b>. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.</p> <p>The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.</p> <p>In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.</p> <p>Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of</p>



	<p>the land is bound by certain duties affecting land, the <b>covenant affecting the land may be enforced by the successor of the seller.</b></p> <p>In such a case, third party to a contract can file the suit although it has not moved the consideration.</p> <p>Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.</p>
<b>QUES-8</b>	<p>X agrees to pay Y ` 1,00,000/-, if Y kills Z. To pay Y, X borrows ` 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.</p> <p>III. Between X and Y.</p> <p>IV. Between X and W</p>
<b>Ans</b>	<p><b>Illegal Agreement:</b> It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.</p> <p>In the present case,</p> <p>III. X agrees to give ` 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.</p> <p>IV. X borrows ` 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.</p>
<b>QUES-9</b>	<p>Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages?</p>



<b>Ans</b>	<p>No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him.</p> <p>In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract.</p>
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## CONSIDERATION

QUES-1	A who was badly in need of money offered to sell his piano worth Rs.8,500 to B for Rs.5,000. B refused to buy. A gradually lowered his price until Rs.2,500 was reached, which B accepted. Before the piano was delivered A received an offer of a larger sum from X and he refused to carry out the contract with B claiming that the consideration was inadequate. Is A liable to pay damages to B for failure to carry out his part of contract?
QUES-2	Comment: - 1) There can be stranger to Consideration 2) There can be Stranger to Contract
QUES-3	A agrees to transfer certain properties to be held by T in trust for the benefit of B. can B enforce the agreement?
Ans	According to the Indian Contract Act 1872 <b>Doctrine of privity of contract state that only</b> parties to contract can sue each other. A stranger to contract cannot file the suit against the parties to contract. There are various exceptions to privity to contract. One of them when <b>a person (called beneficiary) in whose favour a trust or other interest in some specific immovable property</b> has been created can enforce it even though he is not a party to the contract. In the present case, A agrees to transfer certain properties to be held by T in trust for the benefit of B. B can enforce the agreement even though he is not a party to the agreement
QUES-4	A receives some money from T to be paid over to P. A admits of this receipt to P .Can A deny to pay?
Ans	The Indian Contract Act 1872 provides that only parties to contract can sue each other, stranger to contract cannot file suit. There are various exceptions of privity to contract. One of them is the Acknowledgement or estoppel. Where the promisor <b>by his conduct, acknowledges or otherwise constitutes himself as an agent of a third</b>



	<p>party, a binding obligation is thereby incurred by him towards the third party.</p> <p>A receives some money from T to be paid over to P. A admits of this receipt to P. P can recover the amount from A who shall be regarded as the agent of P.</p> <p>Thus, he cannot deny to pay.</p>
<b>QUES-5</b>	<p>A owned a piece of land which he sold to B under a condition that a certain part of the land will be maintained as a public park. B abided by the covenant and eventually sold the land to C. Though C was aware of it, he build a house in the specific plot. When A came to know he filed a suit against C. C denied the liability as he was not a party to contract. Comment whether C can deny liability.</p>
<b>Ans</b>	<p>According to the provision of 'doctrine of Privity' of Indian Contract Act, , only parties to contract can sue each other. A strange to contract cannot file a suit against any of the parties to contract. But there are certain exceptions to it. In case of transfer of immovable property, <b>the purchaser of the land with the notice that the owner of land is bound by certain covenants created by an agreement, shall be bound by them although he was not a party to the original contract containing covenant.</b></p> <p>The above case study is based on this exception. In the present case, A sold a land to B, under a condition that certain part of land was to be maintained as public park. B sold the land to C who build a house in the specific plot. When A came to know, he field a suit against C. This is based on exception of doctrine of privity to contract.</p> <p>Hence, C cannot deny liability although he was not a party to the original agreement that contained the covenant, but is bound by the covenant.</p>



<p><b>QUES-6</b></p>	<p>Mr. Shyam Mundra was a big businessman having one son and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?</p>
<p><b>Ans</b></p>	<p>Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is <b>valid if it is expressed</b> in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In other words, a written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.</p> <p>In the given problem, the transfer of house made by Mr. Shyam Mundra on account of natural love and affection between the parties standing in near relation to each other <b>is written but not registered</b>. Hence, this transfer is not enforceable.</p>
<p><b>QUES-7</b></p>	<p>Comment:- No Consideration No Contract (5 Marks) Hint: Sec 25</p>
<p><b>QUES-8</b></p>	<p>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.</p>



<b>Ans</b>	<p>Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.</p> <p>In the given question, Mr. Ramesh promised to pay ` 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.</p>
<b>QUES-9</b>	<p>A Hindu husband, after referring to quarrels and disagreement between him and his wife, executed a registered document in favor of his wife agreeing to pay her for maintenance, but no consideration moved from the wife. Is the agreement valid?</p>
<b>Ans</b>	<p>According to the Indian contract Act, 1872 an agreement made without consideration is valid if it is expressed in writing &amp; is registered out of natural love &amp; affection between parties standing in near relation to each other,</p> <p>In the present case, A Hindu husband, after referring to quarrels and disagreement between him and his wife, executed a registered document in favor of his wife agreeing to pay her for maintenance, but no consideration moved from the wife.</p> <p>Held, the agreement was void for want of consideration as the essential requirement that the agreement is made on account of natural love and affection between the parties was missing.</p> <p>Hence , it was held that the promise was not enforceable as natural love and affection element is missing</p>





## CAPACITY TO CONTRACT

QUES-1	<p>Vikas , aged 16 years, was studying in an engineering college. On 1st March, 2019 he took a loan of ` 2 lakhs from Rahul for the payment of his college fee and agreed to pay by 30th May, 2020. Vikas possesses assets worth ` 15 lakhs. On due date, Vikas fails to pay back the loan to Rahul. Rahul now wants to recover the loan from Vikas out of his assets. Decide whether Rahul would succeed referring to the provisions of the Indian Contract Act, 1872.</p>
Ans	<p>According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the <b>age of majority</b> according to the law to which he is subject, and who is of <b>sound mind</b> and is <b>not disqualified from contracting by any law to which</b> he is subject.</p> <p>A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Vikas who is a minor is incompetent to contract and any agreement with him <b>is void</b> [Mohori Bibi Vs Dharmo Das Ghose 1903]., prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the <b>supplier or lender will be entitled to claim the money/price of goods or services which are necessities 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.</b> Thus, according to the above provision, Rahul will be entitled to recover the amount of loan given to Vikas for payment of the college fees from the property of the minor.</p>
QUES-2	<p>Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs.</p>



	<p>80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:</p> <ol style="list-style-type: none"><li>i. Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?</li><li>ii. Mr. Shekhar can recover his car from Mr. Masoom?</li></ol>
<b>Ans</b>	<p>According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio <b>but minor can act as an agent. But he will not be liable to his principal for his acts.</b></p> <p>In the instant case, Mr. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.</p> <ol style="list-style-type: none"><li>i. Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.</li><li>ii. Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom as principal is liable for the acts of the agent.</li></ol>
<b>QUES-3</b>	<p>Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.</p>



	<p>Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:</p> <ul style="list-style-type: none"><li>i. Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?</li><li>ii. What is the maximum amount- of money that can be recovered by Mr. M?</li><li>iii. Shall the provisions of the above act also apply to the medical treatment given to the grandmother?</li></ul>
<p><b>Ans</b></p>	<ul style="list-style-type: none"><li>i. Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, <b>or anyone whom he is legally bound to support</b>, 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. In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.</li><li>ii. Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)</li><li>iii. <b>Necessaries will include the emergency</b> medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.</li></ul>
<p><b>QUES-4</b></p>	<p>Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for</p>



	<p>purchase of Laptop on credit amounting ` 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her. She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.</p> <ul style="list-style-type: none"><li>I. By filing a case against Srishti, a minor for recovery of outstanding amount with interest?</li><li>II. By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?</li><li>III. By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity?</li></ul>
<p><b>Ans</b></p>	<p>A contract made with or by a minor is void ab-initio: Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.</p> <ul style="list-style-type: none"><li>I. By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.</li><li>II. Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents. In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.</li><li>III. No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified. Hence, in this</li></ul>



	<p>case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.</p>
<b>QUES-5</b>	<p>Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.</p> <p>(i) X aged 16 years borrowed a loan of ` 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.</p>
<b>Ans</b>	<p>I. According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. <b>A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.</b> According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law. Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles. In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessities supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.</p>
<b>QUES-6</b>	<p>Richa a minor entered into contract of buying a scooty from the dealer and mentioned that her parents will be liable for the payment of scooty. The dealer sent a letter to her parents for money.</p> <p>The parents will not be liable for such payment as the contract was entered by a minor in their absence and out of their knowledge.</p>



**Ans**

Minor cannot bind parent or guardian: In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.



## FREE CONSENT

<b>QUES-1</b>	State the Difference Between a) Coercion and Undue Influence b) Fraud and Misrepresentation c) Unilateral Mistake and Bilateral Mistake d) Void agreement and Void Contract e) Wagering agreement and contingent contract
<b>QUES-2</b>	Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid Rs. 20,000 for that table. Later on, it was found that one leg of table is broken and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872?
<b>Ans</b>	<p>As per Section 17 of Indian Contract Act, 1872 , "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment .When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed. In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). If the aggrieved party has obtained some benefits in such a contract (caused by fraud), then all such benefits should be restored or returned back. And if aggrieved party has suffered any losses, it should be compensated by the other party.</p> <p>On the basis of above provisions and facts of the case, in case a fraud is committed by one party, the contract becomes voidable at the option of the aggrieved party. Hence, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.</p>



<p><b>QUES-3</b></p>	<p>Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872?</p>
<p><b>Ans</b></p>	<p>Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:</p> <ul style="list-style-type: none"><li>i. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;</li><li>ii. the active concealment of a fact by one having knowledge or belief of the fact;</li><li>iii. a promise made without any intention of performing it;</li><li>iv. any other act fitted to deceive;</li><li>v. any such act or omission as the law specially declares to be fraudulent.</li></ul> <p>It was also explained that mere silence is not fraud. Silence amounts to fraud where (a) there is a duty to speak or (b) where silence is equivalent to speech.</p> <p>On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.</p>
<p><b>QUES-4</b></p>	<p>The right of rescission of Contract is Lost in Some case of Fraud. Comment</p>





<b>QUES-5</b>	Comment 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.
<b>Ans</b>	<p>According to the Indian Contract Act, 1872 It means misstatement of a fact material to the contract. It is a false representation made innocently before or any time of the contract, <b>without any intention of deceiving</b> the other party. Consent to an agreement obtained by misrepresentation is not real and free. The aggrieved party <b>can either avoid or rescind</b> the contract or <b>accept the contract while insisting that he shall place</b> in the position in which he would have been if the representation made had been true.</p> <p><b>Right of rescission</b> is lost in case when the aggrieved party <b>after becoming aware</b> of the misrepresentation <b>takes a benefit</b> under the contract.</p> <p>In the present case, 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.</p> <p>Hence, in this case Suraj could not rescind the contract, as his acceptance to the offer by Sohan to bear 40% of the cost of repairs implied amounts to final acceptance of sale.</p>
<b>QUES-6</b>	Discuss the two Legal effects of Coercion
<b>QUES-7</b>	X buys a painting believing it to be worth Rs.1,00,000 while in fact it is worth only Rs.10,000. Is it a valid contract?



<b>Ans</b>	Section to which the given problem relates: Explanation to Section 20. Decision: This contract is valid. Reason: <b>An erroneous opinion as to the value of the thing which</b> forms the subject matter of the agreement <b>is not treated as mistake relating to a matter of fact.</b> Here, X will have to blame himself for ignorance of the true value of the painting.
<b>QUES-8</b>	One Blenkarn, knowing that Blenkarn & Co. was a reputed customer of Lindsay & Co., placed an order with Lindsay & Co. by imitating the signature of Blenkarn & Co. The goods were then sold to Cundy, an innocent buyer. A suit was filed by Lindsay & Co. against Cundy for recovery of goods. Discuss the legal position.
<b>Ans</b>	Section to which the given problem relates: Section 22 Decision: Cundy didn't get a good title and hence he must return the goods or make payment for the same. Reason: There was no contract between Lindsay & Co. and Cundy as Lindsay never intended to contract with Blenkarn.
<b>QUES-9</b>	Comment:- Every Silence is Not Fraud
<b>QUES-10</b>	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 liter 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. (6 Marks)



<b>Ans</b>	<p>As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.</p> <p>A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall <b>be performed</b>, and <b>that he shall be put in the position in</b> which he would have been if the representations made had been true.</p> <p>Exception- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, <b>nevertheless, is not voidable if the party whose</b> consent was so caused had the means of <b>discovering the truth with ordinary diligence</b>.</p> <p>In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.</p>
<b>QUES-11</b>	<p>P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:</p> <ul style="list-style-type: none"><li>a) If P says nothing about the unsoundness of the horse to Q.</li><li>b) If P says nothing about it to Q who is P's daughter who has just come of age.</li><li>c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing. (3 Marks)</li></ul>
<b>Ans</b>	<p>According to Section 17 of the Indian Contract Act, 1872, 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</p>

	<p>silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,</p> <ul style="list-style-type: none"><li>(a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.</li><li>(b) (ii) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.</li><li>(c) (iii) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.</li></ul>
<b>QUES-12</b>	<p>The prospectus of X Ltd contained false statement. Mr Y purchased shares of X Ltd after reading the prospectus. Mr Y sold it to Mr Z on stock exchange. Mr Z wants to claim compensation from X Ltd for misstatements in prospectus. Can he claim?</p>
<b>Ans</b>	<p>According to the Indian contract Act, 1872 Fraud means and includes any of the following acts committed by a party to a contract (or with his connivance or by his agent) with intent to deceive another party thereto or his agent; or to induce him to enter into the contract. It includes :-</p> <ul style="list-style-type: none"><li>a) The suggestion, <b>as to a fact of that which</b> is not true, by one who does not believe it to be true</li><li>b) The active concealment of a fact by one having knowledge or belief of the fact</li><li>c) A promise made without any intention of performing it</li><li>d) Any other act fitted to deceive or</li><li>e) Any such actoro mission as the law specially declares to be fraudulent.</li></ul>



IN THE PRESENT CASE, The prospectus of X ltd contained false statement .Mr Y purchased shares of X ltd after reading the prospectus .Mr Y sold it to Mr Z on stock exchange .Mr Z wants to claim compensation from X ltd for misstatements in prospectus

Z cannot claim for compensation as misstatements in prospectus has not influenced Mr Z to purchased shares, he brought the shares on stock exchange when the market rates are favourable.



## AGREEMENT OPPOSED TO PUBLIC POLICY

<b>QUES-1</b>	Mr. Seth an industrialist has been fighting a long-drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of Rs.5 lakhs would b 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.
<b>Ans</b>	Mr. X cannot recover Rs. 5 lakhs from Mr. Seth since the given agreement restrains Mr. X from exercising a lawful profession, and so this agreement is in restraint of trade (Sec 17).
<b>QUES-2</b>	State exceptions to the Rule: "An agreement in restraint of Trade is Void"
<b>QUES-3</b>	Mukesh is running a grocery store in Delhi. He sells his grocery business, including goodwill worth `1,00,000 to Rohit for a sum of ` 5,00,000. After the sale of goodwill, Rohit made an agreement with Mukesh. As per this agreement, Mukesh cannot open another grocery store (similar kind of business) in the whole of India for next ten years. However, Mukesh opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Mukesh with reference to Indian Contract Act, 1872?
<b>Ans</b>	According to Section 27 of the Indian Contract Act, 1872, any <b>agreement that restrains a person from carrying on a lawful trade, profession or business is a void agreement.</b> However, there are certain <b>exceptions to this rule.</b> One of the statutory exceptions includes sale of Goodwill. <b>The restraint as to sale of goodwill would be a valid restraint provided -</b>  (i) Where the restraint is to refrain from carrying on a similar



	<p>business,</p> <ul style="list-style-type: none"><li>(ii) The restraint should be within the specified local limits,</li><li>(iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price,</li><li>(iv) The restriction <b>should be reasonable</b>. Reasonableness of restriction will depend upon number of factors as considered by court.</li></ul> <p><b>In the given case, Mukesh has sold</b> the goodwill and there is restraint for not carrying on the same business of grocery store. However, the restriction imposed on Mukesh is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement.</p> <p>Hence, <b>Rohit cannot take any legal action against Mukesh as the restriction is unreasonable</b> as per Section 27 of Indian Contract Act, 1872. Hence, the <b>agreement made between</b> in restraint of trade between Mukesh and Rohit is <b>void agreement</b>.</p>
<p><b>QUES-4</b></p>	<p>State with reason(s) whether the following agreements are valid or void as per the Indian Contract Act, 1872:</p> <ul style="list-style-type: none"><li>(i) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.</li><li>(ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.</li><li>(iii) X, a physician and surgeon, employs Y as an assistant on a salary of ` 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.</li></ul>
<p><b>Ans</b></p>	<p>(i) The given agreement is valid. <b>Reason:</b> An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from</p>



enforcing his rights under a contract through a Court (Section 28 of the Indian Contract Act, 1872). A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement, suit may be filed in one of the courts having jurisdiction.

(ii) The said agreement is void.

**Reason:** This agreement is void as the **two parties are thinking about different** subject matters so that **there is no real consent**, and the agreement may be treated as void because of **mistake of fact** as well as **absence of consensus**.

(iii) The said agreement is valid.

**Reason:** An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void (Section 27). But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, **not to compete with his employer is not in restraint of trade**.





## DISCHARGE OF CONTRACT

QUES-1	Explain Briefly the Modes of Discharge of Contract
QUES-2	Explain Briefly the Modes of Discharge of Contract by Mutual Consent
QUES-3	Explain the Difference Between Liquidated Damages & Penalty
QUES-4	<p>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.</p> <p>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. (4 Marks)</p>
Ans	<p>In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</p> <p>Referring to the above provision, we can analyse the situation as under.</p>



	<p>The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the <b>security is not a benefit received under the contract, it is a security that</b> 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.</p>
<b>QUES-5</b>	<p>M Ltd. contracts with Shanti with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs. 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd. referring to the legal provisions of the Indian Contract Act.</p>
<b>Ans</b>	<p>According to the Indian Contract Act, 1872 there are various remedies for breach of Contract. One of them is <b>ordinary damages</b> which can be claimed due to the breach even if it is not mentioned in the contract. Such damages cause in <b>the usual course</b> of events due to the breach and in <b>the Direct Loss</b> The <b>measure of ordinary damages is the difference between</b> the contracted price and the market price at the date of the breach. Another type of damage <b>is special damage which can be claimed only when it is written in the contract</b> before hand. It is also known as remote loss.</p> <p>M Ltd. contracts with Shanti with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to</p>



	<p>labour strike, M Ltd could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs. 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract.</p> <p>Hence ,M ltd is required to compensate for the loss of Rs 1.25 lakhs which has arisen due to the non performance of the contract by specified date. IF M. Ltd. had knowledge 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 required to pay the compensation which Shanti Traders, had to pay to Zenith traders for breach of contract, Otherwise M Ltd. is not liable for compensation.</p>
<b>QUES-6</b>	<p>Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmadabad for supply of Urid Dhall on 10.11.2006 at a contracted price of Rs.40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramashwwamy stating that the price of Urid Dhall was sky rocketing to Rs.50 per. kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to Rs.53 on 09.12.06 Advise Mr. Ramaswamy Citing the legal position.</p>
<b>Ans</b>	<p>According to the Indian Contract Act,1872 there are various modes to discharge a contract. <b>Supervening Impossibility is one</b> of them which means that <b>after the contract is entered some</b> events happened &amp; performance become impossible due to any of the factors death, disablement, subsequent illegality or destruction of subject matter. <b>Here an increase in price of urraddall does not amount to supervening impossibility.</b> There are various remedies for breach of Contract. One of them is ordinary damages which can be claim due to the breach even if it is not mentioned in the contract. <b>The measure of ordinary damages is the difference between the contracted price and the market price at</b></p>



	<p>the date of the breach. Ordinary damages arising in the usual course of business due to the breach.</p> <p>In the present case, Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmadabad for supply of Urid Dhall on 10.11.2006 at a contracted price of Rs.40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramashwwamy stating that the price of Urid Dhall was sky rocketing to Rs.50 per. kg. and he would not be able to supply as per original contract.</p> <p>Hence if If Ramaswamy waits till 09.12.2006 Mr. Shah shall be liable to pay damages to Mr. Ramaswamy. The amount of damages shall be 10 tons @ Rs.13 per kg. (i.e., difference between the contract price and price as on 09.12.2006), i.e. Rs. 1,30,000. However, if some supervening impossibility arises before 09.12.2006 (e.g., imposition of ban on trading in urad dhall by the Government), the contract shall become void, and consequently, Mr. Shah shall not be liable to pay any damages. If Ramaswamy repudiates the contract on 04.12.2006 Mr. Shah shall be liable to pay damages to Mr. Ramaswamy. The amount of damages shall be 10 tons @ Rs. 10 per kg (i.e. difference between the contract price and price as on 04.12.2006), i.e.,Rs. 1,00,000.</p>
<p><b>QUES-7</b></p>	<p>Explain the Rules as to Performance of Reciprocal Promises?</p>
<p><b>QUES-8</b></p>	<p>X, Y and Z jointly borrowed ` 1,50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:</p> <ul style="list-style-type: none"><li>a) Y can recover the contribution from X and Z,</li><li>b) Legal representatives of X are liable in case of death of X,</li></ul> <p>Y can recover the contribution from the assets, in case Z becomes insolvent.</p>



<p>Ans</p>	<p>Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.</p> <p>Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.</p> <p>As per the provisions of above sections,</p> <ul style="list-style-type: none"><li>a) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.</li><li>b) 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.</li><li>c) Y also can recover the contribution from Z's assets.</li></ul>
<p>QUES-9</p>	<p>Krish, Kamy and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kamy become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.</p>



<b>Ans</b>	<p>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.</p> <p>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.</p> <p>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.</p> <p>In the instant case, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.</p>
<b>QUES-10</b>	<p>Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ` 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.</p> <ol style="list-style-type: none"><li>1. Whether the management of Shital Vidya Mandir has right to terminate the contract?</li><li>2. If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?</li><li>3. Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?</li></ol>
<b>Ans</b>	<p>Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified,</p>



by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

1. Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.
2. In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.
3. As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

**QUES-11**

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 forthe 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 the Indian Contract Act, 1872?

1. Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
2. Could Mr. Rich ask Mr. K for refund of money paid in advance to his father



<b>Ans</b>	<p>A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.</p> <ol style="list-style-type: none"><li>1. In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.</li><li>2. According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</li></ol> <p>Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.</p>
<b>QUES-12</b>	<p>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.</p> <p>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.</p> <p>Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.</p> <p>Now you decide:</p> <ol style="list-style-type: none"><li>1. Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?</li></ol>





	<ol style="list-style-type: none"><li>2. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?</li><li>3. 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?</li></ol>
<b>Ans</b>	<p>Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.</p> <ol style="list-style-type: none"><li>1. As per the provisions of 59 of the Act, 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.</li><li>2. Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.</li><li>3. As per the provisions of 60 of the Act, 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, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.</li><li>4. As per the provisions of 61 of the Act, 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</li></ol>



	<p>suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.</p> <p>5. Hence in case where neither Mr. Datural nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.</p>
<b>QUES-13</b>	Define Contingent Contract and Explain a Contingent Contract based on the Happening of an event within the specified time and on the non-happening of an even within a specified time?
<b>QUES-14</b>	Explain Various types of Contingent Contracts
<b>QUES-15</b>	Arvinda took a bet of Rs 20000 with bannerjee that a certain horse would win the race. Arvinda and Banerjee both resident of Kolkata. Arvinda borrowed Rs 20000 from his friend chatterjee for this purpose. Arvinda lost the bet and paid Rs 20000 to bannerjee. Can chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in Ahmadabad between the parties residing there.
<b>Ans</b>	<p>As per Indian contract Act, wagering agreement is an agreement in which one person pays a certain sum of money to another person on the happening or non-happening of an future uncertain events. The following are the features of wagering agreement</p> <ul style="list-style-type: none"><li>• There must be two parties</li><li>• They have promised to pay a sum of money, on the happening or non-happening of the uncertain future events</li><li>• None of the parties have the control over the event</li><li>• The event must be uncertain</li></ul> <p>In the present case Arvinda took a bet with Banerjee of 20000 that a certain horse would win the race both Arvinda and Banerjee are the residents of Kolkata. Arvinda borrows Rs 20000 from his friend</p>



	<p>Chatterjee for this purpose Arvinda lost the bet and paid Rs 20000 to banerjee. In this case Chatterjee can recover the amount of loan from Arvinda as collateral transactions to wagering agreement in Kolkata are valid so Arvinda id bound to pay the amount of loan to banerjee If the transaction would take place in Ahmedabad then both the transaction i.e wagering and collateral would be void.In such a case Chatterjee would not be able to recover the money.</p>
<b>QUES-16</b>	<p>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)</p>
<b>Ans</b>	<p><b>Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872):</b> A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.</p> <p>Thus, a finder of lost goods has:</p> <ol style="list-style-type: none"><li>1. to take proper care of the property as man of ordinary prudence would take</li><li>2. no right to appropriate the goods and</li><li>3. to restore the goods if the owner is found.</li></ol> <p>In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner</p>
<b>QUES-17</b>	<p>Explain Difference Between Wagering Agreement and Contingent Contract</p>



<b>QUES-18</b>	P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?
<b>Ans</b>	Section 69 of the Indian Contract Act, 1872 states that a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other. In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party, P made the payment and can recover the same from D.
<b>QUES-19</b>	"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872.
<b>Ans</b>	<b>Liquidated damages</b> is a genuine pre-estimate of compensation of damage for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties. <b>Penalty</b> on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties. <b>Distinction between liquidated damages and penalty</b> Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very

difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

**QUES-20**

Mr. Murti was travelling to Manali with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid way in cold night. Driver advised the passenger to get the shelter in nearest hotel which was at a distance of only one kilometre from that place. The wife of Mr. Murti caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and



	<p>medical treatment for his wife. Explain, whether Mr. Murti would get compensation for which he filed the suit? (4 Marks)</p>
<b>Ans</b>	<p>Section 73 of Indian Contract Act, 1872 provides 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. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.</p> <p>In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.</p> <p>On the basis of above provisions and facts of the case, it can be said that Mr. Murti can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.</p>
<b>QUES-21</b>	<p>Explain any five circumstances under which contracts need not be performed with the consent of both the parties.</p>
<b>Ans</b>	<p>Under following circumstances, the contracts need not be performed with the consent of both the parties:</p> <p>(i) <b>Novation:</b> Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)</p>



	<ul style="list-style-type: none"><li>(ii) <b>Rescission:</b> A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)</li><li>(iii) <b>Alteration:</b> Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)</li><li>(iv) <b>Remission:</b> 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. In other words, a contract is discharged by remission. (Section 63)</li><li>(v) <b>Rescinds voidable contract:</b> When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.</li><li>(vi) <b>Neglect of promisee:</b> 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. (Section 67)</li></ul>
<p><b>QUES-22</b></p>	<p>Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.</p> <p>J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.</p>
<p><b>Ans</b></p>	<p>As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when</p>



	<p>made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.</p>
<b>QUES-23</b>	<p>Krish, Kamyra and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.</p>
<b>Ans</b>	<p>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, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.</p>
<b>QUES-24</b>	<p>"When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract". Explain.</p>





<b>Ans</b>	<p><b>Effect of a Refusal of Party to Perform Promise According to Section 39</b>, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.</p> <p>From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.</p> <p>In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.</p>
<b>QUES-25</b>	<p>Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹ 70,000 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 July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of ₹ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹ 70,000, 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 Mr. Vikas contention.</p>
<b>Ans</b>	<p><b>Subsequent or Supervening impossibility (Becomes impossible after entering into contract):</b> When performance of promise become impossible or illegal by occurrence of an unexpected event or a change</p>



	<p>of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.</p> <p>Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</p> <p>In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ₹ 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.</p>
<b>QUES-26</b>	<b>What are Conditions to be satisfied for a valid tender or attempted performance</b>
<b>Ans</b>	<p>(i) It must be unconditional. Example 3: A offers to B to repay only the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.</p> <p>(ii) It must be made at proper time and place. Example 4: If the promisor wants to deliver the goods at 2 a.m., this is not a valid tender unless it was so agreed.</p> <p>(iii) Reasonable opportunity to examine goods. Example 5: A contract's to deliver B at his warehouse 1000 Kgs of wheat on certain date. A must bring the wheat to B's warehouse on the appointed day, under such circumstances that B may have reasonable opportunity of satisfying himself that the thing offered is wheat of the quality contracted for, and that there are 1000 Kgs</p> <p>It must be for whole obligation.</p>



	<p>Example 6: X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatres two nights in every week during the next two months, and Y engaged to pay her ` 10,000 for each night's performance. On the sixth night, X willfully absents herself from the theatre. Y is at liberty to put an end to the contract.</p> <p>Example 7: A promises to deliver 100 bales of cotton on a certain day. On the agreed day and place 'A' offers to deliver 80 bales only. This is not a valid tender.</p>
<b>QUES-27</b>	'K' was directed to return the salary paid to him during the period of reinstatement. [Shyam Lal vs. State of U.P. A.I.R (1968) 130] Whether K Should refund the salary?
<b>Ans</b>	Hint: Sec 70



## SALE OF GOODS ACT

QUES-1	Explain the exceptions to Doctrines of Caveat Emptor.
QUES-2	<p>Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.</p> <ol style="list-style-type: none"><li>i. State with reasons whether Sonal can recover the amount from the Jeweller.</li><li>ii. What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?</li></ol>
Ans	<p>As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where 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 and as per <b>Section 4(4), an agreement to sell becomes a sale</b> when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.</p> <ol style="list-style-type: none"><li>i. On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller and not a sale. Even though the payment was made</li></ol>



	<p>by Sonal, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Sonal has right to avoid the agreement to sell and can recover the price paid.</p> <p>ii. If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even though he has to bear some expenses for repair; he cannot charge it from Sonal.</p>
<p><b>QUES-3</b></p>	<p>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?</p>
<p><b>Ans</b></p>	<p>Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same Purpose.</p>



	<p>Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.</p> <p>Where the bales have been selected with the consent of the buyer's representatives:</p> <ol style="list-style-type: none"><li>1. 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.</li><li>2. 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.</li></ol>
<p><b>QUES-4</b></p>	<p>Explain the Principle of Nemo Dat Quad Non-Habit</p>
<p><b>QUES-5</b></p>	<p>M/s Woodworth &amp; 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.</p> <p>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.</p> <p>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.</p>



	<p>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.</p> <ol style="list-style-type: none"><li>1. Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".</li><li>2. Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?</li></ol>
<p><b>Ans</b></p>	<p>(i) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.</p> <p>Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:</p> <ol style="list-style-type: none"><li>1. Fitness as to quality or use</li><li>2. Goods purchased under patent or brand name</li><li>3. Goods sold by description</li><li>4. Goods of Merchantable Quality</li><li>5. Sale by sample</li><li>6. Goods by sample as well as description</li><li>7. Trade usage</li><li>8. Seller actively conceals a defect or is guilty of fraud</li></ol> <p>(ii) As Mr. Das <b>has specifically mentioned that he</b> required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930</p>



**QUES-6**

Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ` 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful? Explain the basic law on sale by sample under Sale of Goods Act 1930? Decide the fate of the case and options open to the buyer 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

**Ans**

i. As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, 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.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.





- ii. Sale by Sample: (Section 17 of the Sale of Goods Act, 1930): As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, 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.

As per the provisions of Sub-Section (2) of section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

- a) that the bulk shall correspond with the sample in quality;
  - b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
  - c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
- iii. In the instant case, the buyer does not have any option available to him for grievance redressal.
  - iv. In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

**QUES-7**

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

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

Ans

A-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.

- i. In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (Two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.
- ii. It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.



<p><b>QUES-8</b></p>	<p>Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.</p> <ol style="list-style-type: none"><li>i. Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?</li><li>ii. What is the remedy available to Mr. M?</li></ol>
<p><b>Ans</b></p>	<p>(i) According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.</p> <p>Further, as per Section 16(l) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.</p> <p>In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.</p> <p>(ii) When one party does not fulfil his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.</p>



<b>QUES-9</b>	Avyukt purchased 100 Kgs of wheat from Bhaskar at `30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.
<b>Ans</b>	<p>As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.</p> <p>On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.</p>
<b>QUES-10</b>	Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of windows. The technician comes at the site and takes size of area where window to be fitted. Afterwards, Iron merchant on discussion with his technician intimates Priyansh that cost of the window will be ` 5,000 and he will take ` 1,000 as advance. Priyansh gives ` 1,000 as advance and rest after fitting of window. After three days when technician try to fit the window made by him at the site of Priyansh, it was noticed that the size of window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use. So, he will not



	<p>refund the advance money rather Priyansh should give him the balance of ` 4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back?</p>
<b>Ans</b>	<p>By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods <b>should be in merchantable position at the time</b> of transfer of property. Sometimes, the purpose for which the goods are required may be ascertained from the <b>facts and conduct of the parties to the sale, or from the nature of description of the</b> article purchased. In such a case, the buyer need not tell the seller the purpose for which he buys the goods.</p> <p>On the basis of above provisions and facts given in the question, it is clear that as window size was not proper, window was not in merchantable condition. Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.</p>
<b>QUES-11</b>	<p>Mr. Dheeraj was running a shop selling good quality washing machines. Mr. Vishal came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Dheeraj showed him a particular machine which Mr. Vishal liked and paid for it. Later on, when the machine was delivered at Mr. Vishal's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Dheeraj about the delivery of wrong machine. Mr. Dheeraj refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930, discuss whether Mr. Dheeraj is right in refusing to exchange the washing machine?</p>
<b>Ans</b>	<p>According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample <b>as well as by description, the implied condition</b> is that the goods must correspond to both sample as well as</p>



	<p>description. In case, the goods do not correspond to sample or description, the buyer has the <b>right to repudiate</b> the contract.</p> <p>Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the <b>particular purpose for which the goods are required and he relies on his judgment and skill</b> of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.</p> <p>In the given case, Mr. Vishal has informed to Mr. Dheeraj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine.</p> <p>Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description , therefore Mr. Vishal can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Dheeraj to replace the washing machine with desired one.</p>
<p><b>QUES-12</b></p>	<p>Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.</p> <p>Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the</p>

parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

1. Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
2. Whether the replacement of damaged tiles be imposed on M/ s Makrana Marbles? Explain.

Ans

According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides **that there is no implied condition as to quality of fitness of the goods sold for any particular purpose.** However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the instant case, Mr. K has made known to Mr. J the purpose of his purchase and relied on his skill and judgement. It was the duty of Mr. J to supply the marbles fit for that purpose including for second floor. Since the marbles supplied were not fit for second floor Mr. J is liable to replace the marbles to the extent not fit for that purpose.

Duty of Mr. K (the buyer) As per the above doctrine it was the duty of the buyer Mr. K to make known to Mr. J the purpose of his purchase of marbles. He has fully performed his part arranging the visit of Mr. J to the site.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K.



	<p>Considering the above provisions Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr, J when he has made him known about that and relied on his skill and judgement.</p>
<b>QUES-13</b>	<p>Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021.</p> <p>The delivery of wheat and the payment was to be made in next three months i.e. by 10 th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act,1930, discuss if such a sale made by Sohan to Vikram is a valid sale?</p>
<b>Ans</b>	<p>The given question deals with the rule related to transfer of title of goods. Section 27 of the Sale of Goods Act ,1930 specify the general rule " No man can sell the goods and give a good title unless he is the owner of the goods". The latin maxim " NEMO DET QUOD NON HABET". However, there are certain exceptions to this rule. One of the exceptions is given in Section 30 (1) of Sale of Goods Act,1930 <b>wherein the sale by seller in possession of goods even after sale is made, is held to be valid. If the following conditions are satisfied</b>, then it amounts to a valid sale although the seller is no more the owner of goods after sale.</p> <ol style="list-style-type: none"><li>i. A seller has possession of goods after sale</li><li>ii. with the consent of the other party (i.e. buyer)</li><li>iii. the seller sells goods (already sold) to a new buyer</li><li>iv. the new buyer acts in good faith</li></ol>





	<p>v. The new buyer has no knowledge that the seller has no authority to sell.</p> <p>In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods and this is with the consent of buyer i.e. Binod. Now Sohan sell those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.</p> <p>Since all the above conditions given under Section 30 (1) of Sale of Goods Act, 1930 are satisfied, therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.</p>
<p><b>QUES-14</b></p>	<p>Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.</p> <p>With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler?</p>
<p><b>Ans</b></p>	<p><b>Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):</b></p> <p>When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points -</p> <ol style="list-style-type: none"> <li>i. Right to examine the goods by the buyer. The buyer should be given chance to examine the good.</li> </ol>



	<p>ii. The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed <b>even after the reasonable examination and the buyer</b> purchases such goods, <b>then the seller is held liable</b>. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]</p> <p>In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.</p>
QUES-15	Explain Briefly Rights of Unpaid Seller against the (i) Goods (ii) Buyer
QUES-16	What are Essentials of Appropriation of Goods
QUES-17	Explain the Rights of buyer against the Unpaid seller?
QUES-18	State the Differences (i) Sale and Hire (ii) Conditions and warranty (iii) Rights of lien and stoppage in transit (iv) Sale and are agreement
QUES-19	State those cases where breach of condition is treated as breach of warranty
QUES-20	State the essentials of auction sale?



<p><b>QUES-21</b></p>	<p>(i) TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber.</p> <p>(ii) AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.</p>
<p><b>Ans</b></p>	<p>I. <b>Condition as to quality or fitness [Section 16(1)</b> of the Sale of Goods Act, 1930]: The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods. There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:</p> <ol style="list-style-type: none"><li>a. The buyer should have made known to the seller the particular purpose for which goods are required.</li><li>b. The buyer should rely on the skill and judgement of the seller.</li><li>c. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not. In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled. Hence, TK cannot reject the timber.</li></ol> <p>Alternatively, the above answer can also be provided as under: According to Section 15 of the Sale of Goods Act, 1930 where there is a contract for the sale of goods by description, there is an implied</p>



	<p>condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods. In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.</p> <p>II. Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930): Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods. 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. In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.</p>
<p><b>QUES-22</b></p>	<p>What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.</p>
<p><b>Ans</b></p>	<p>I. Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930): In accordance with the provisions of the Sale</p>



	<p>of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.</p> <p>II. <b>Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):</b> Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.</p>
<p><b>QUES-23</b></p>	<p>Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930?</p>
<p><b>Ans</b></p>	<p>As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.</p> <p><b>According to Section 9 of the Sale of Goods Act, 1930, the price</b> in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby <b>agreed</b> or may be determined by the course of dealing between the parties.</p> <p>Even though both the parties missed to discuss the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.</p> <p>In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused</p>



	<p>to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.</p>
<b>QUES-24</b>	<p>What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930?</p>
<b>Ans</b>	<p>a) Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The unpaid seller can exercise the right to re-sell the goods under the following conditions:</p> <ul style="list-style-type: none"><li>i. Where the goods are of a <b>perishable nature</b>: In such a case, the buyer <b>need not be informed</b> of the intention of resale.</li><li>ii. Where he gives <b>notice to the buyer of his intention to re-sell</b> the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:<ul style="list-style-type: none"><li>a) Recover the difference between the contract price and resale price, from the original buyer, as damages.</li><li>b) Retain the profit if the resale price is higher than the contract price.</li></ul>It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].</li><li>iii. Where an unpaid seller who has exercised his right of lien or stoppage in transit <b>resells the goods</b>: <b>The subsequent buyer</b> acquires the good title thereof as against the original buyer, <b>despite the fact that the notice of re-sale has not been given</b></li></ul>



	<p>by the seller to the original buyer.</p> <p>iv. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.</p> <p>It may be noted that in such cases, the <b>seller is not required to give notice of resale</b>. He is entitled to recover damages from the original buyer even if no notice of resale is given.</p> <p>v. Where the property in <b>goods has not passed to the buyer</b>: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. <b>This right is similar to lien and is called "quasi-lien"</b>.</p>
<p><b>QUES-25</b></p>	<p>Comment - Sub sale by the buyer affects the rights of unpaid seller</p>
<p><b>QUES-26</b></p>	<p>X sold 2 TV sets to Y with the terms that one is to be delivered now and another after 2 days. Later Y delivered the first TV to X for some minor repairs. X resold the first TV to P and second to Q. Is the sale of P &amp; Q valid?</p>
<p><b>Ans</b></p>	<p>According to the sale of goods Act, 1930 The general rule is that only the owner of the goods can transfer a good title. No one can give a better title than what he himself has.</p> <p>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.</p> <p>This is termed as Nemo dat quad non habet. <b>But there are certain exceptions one such is Sale by a seller in possession after sale</b></p>



	<p>Seller, who has the possession of the goods already sold by him, may resell such goods to a new buyer, and the new buyer shall have a valid title to such goods, if the following conditions are satisfied:</p> <ul style="list-style-type: none"><li>a) The ownership of goods has been passed to the buyer.</li><li>b) The seller continues to be in the possession of goods, even after their sale,</li><li>c) The seller resells the goods to a new buyer.</li><li>d) The new buyer buys the goods in good faith i.e., the new buyer had no knowledge of the fact that the goods being sold by the seller have already been sold to some other buyer and for consideration.</li></ul> <p>In the present case, X sold 2 TV sets to Y with the terms that one is to be delivered immediately &amp; 2nd one after 2 days. Later Y delivered the first TV to X for some minor repairs. X resold the first TV to P and second to Q.</p> <p>Although P bought in good faith, P did not get a good title because X was in possession of TV in the capacity of a bailee and not in the capacity of a seller.</p> <p>But the sale made to Q was valid &amp; Q has got a valid title as all the conditions to the exceptions were satisfied. Hence the sale to P is not valid but of Q is valid.</p>
QUES-27	<p>A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930?</p>
Ans	<p>In this Case ,B, the buyer has no right against A the seller. Section 8 of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided.</p>





	<p>This provision is based on the ground of supervening impossibility of performance <b>which makes a contract void</b>.</p> <p>So, all the following conditions required to treat it as a void contract are fulfilled in the above case:</p> <ul style="list-style-type: none"><li>(i) There is an agreement to sell between A and B</li><li>(ii) It is related to specific goods</li><li>(iii) The goods are lost because of the sinking of ship before the property or risk passes to the buyer.</li><li>(iv) The loss of goods is not due to the fault of either party.</li></ul>
<b>QUES-28</b>	<p>Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample.</p> <p>Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930.</p>
<b>Ans</b>	<p>In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages.</p>
<b>QUES-29</b>	<p>Suraj sold his car to Sohan for ` 75,000. After inspection and satisfaction, Sohan paid ` 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan</p>



	<p>refuses to give the remaining amount on the ground that the car was not in a good condition.</p> <p>Advise Suraj as to what remedy is available to him against Sohan.</p>
<b>Ans</b>	<p>As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that</p> <p>A- Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].</p> <p>B- Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].</p> <p>This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-</p> <ol style="list-style-type: none"><li>1. Interest <b>on the remaining amount</b></li><li>2. Interest <b>during the pendency of the suit.</b></li><li>3. <b>Costs of the proceedings.</b></li></ol>
<b>QUES-30</b>	<p>J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured.</p> <p>But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?</p>



<b>Ans</b>	<p>The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-</p> <ol style="list-style-type: none"><li>1. When the <b>buyer has made</b> the transaction with <b>the consent of the seller</b></li><li>2. When the buyer has made the transaction <b>on the basis of documents of title</b> such as bill of lading, railway receipt or a delivery order etc.</li></ol> <p>In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because <b>he has given the document of title to the buyer and the buyer</b> has made a transaction of sale on the basis of this document. <b>So, R who has purchased the machine from K can demand the delivery of the machine.</b></p>
<b>QUES-31</b>	<p>The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930?</p>
<b>Ans</b>	<p>According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer: -</p> <ol style="list-style-type: none"><li>1. When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.</li><li>2. When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is</li></ol>



fixed after the lapse of reasonable time.

In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.

When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These 5 tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".



## INDIAN PARTNERSHIP ACT

<b>QUES-1</b>	<p>What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.</p>
<b>Ans</b>	<p>Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the <b>principal as well as an agent of other partners</b>. So, the act of one partner done on behalf of firm, binds all the partners. If the <b>element of mutual agency relationship</b> exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.</p> <p><b>Circumstances when partnership is not considered between two or more parties:</b> Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:</p> <ol style="list-style-type: none"> <li>i. Parties have <b>not retained any record of terms</b> and conditions of partnership.</li> <li>ii. Partnership business has maintained <b>no accounts of its own, which</b> would be open to inspection by both parties</li> <li>iii. <b>No account</b> of the partnership was <b>opened with any bank</b></li> <li>iv. No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.</li> </ol>
<b>QUES-2</b>	<p>A &amp; Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A &amp; Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?</p>



<p>Ans</p>	<p>As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.</p> <p>The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely, (a) the suit must be instituted by or on behalf of the firm which had been registered; (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit in the case by B and C against X in the name and on behalf of A &amp; Co. is maintainable.</p> <p>Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.</p>
<p>QUES-3</p>	<p>"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."</p> <p>Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.</p> <p>A. State the liabilities of a minor partner both:</p> <p>a) Before attaining majority and</p>



	<p>b) After attaining majority.</p>
Ans	<p><b>(I) Rights which can be enjoyed by a minor partner:</b></p> <ul style="list-style-type: none"><li>i. A minor partner has a right to his agreed share of the profits and of the firm.</li><li>ii. He can have access to, inspect and copy the accounts of the firm.</li><li>iii. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.</li><li>iv. On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.</li></ul> <p><b>(II) A. (i) Liabilities of a minor partner before attaining majority:</b></p> <ul style="list-style-type: none"><li>a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.</li><li>b) Minor has no personal liability for the debts of the firm incurred during his minority.</li><li>c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.</li></ul> <p><b>(ii) Liabilities of a minor partner after attaining majority:</b></p> <ul style="list-style-type: none"><li>1. At any time within 6 months of his attaining majority or of his obtaining knowledge he had been to the benefits of the partnership, whichever date is latter, the minor may give public notice that he has elected to become a partner of the firm or not.</li><li>2. If he fails to give public notice then he shall become a partner in the firm on the expiry of 6 months.</li><li>3. If he elects to be a partner, or if he fails to give public notice to the effect that he does not elect to be a partner, he is deemed to have become a partner in the firm on the expiry of the said 6 months. If notice is not given, he is assumed to be a partner.</li></ul>



	<p>4. When such a minor elect to become a partner:</p> <p>(a) he becomes personally liable to the third parties for all acts of the firm done since he was admitted to the benefits of partnership.</p> <p>(b) his share in the property and profits of the firm is the share to which he was entitled as a minor partner.</p> <p>5. When such a minor elect not to become a partner:</p> <p>(a) His rights and liabilities continue to be those of a minor up to the date of the notice.</p> <p>(b) His share is not liable for any acts of the firm done after the date of the public notice.</p> <p>(c) He is entitled to sue the partners for his share or the property and profits in the firm.</p>
<b>QUES-4</b>	<p>A, B, and C are partners of a partnership firm ABC &amp; Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm. What will be your advice in case M was having knowledge about the agreement?</p>
<b>Ans</b>	<p>According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict Implied authority of any partners.</p> <p>Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.</p>





	<p>The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:</p> <ul style="list-style-type: none"><li>a) The third party knows about the restrictions, and</li><li>b) The third party does not know that he is dealing with a partner in a firm.</li></ul>
<p><b>QUES-5</b></p>	<p>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?</p>
<p><b>Ans</b></p>	<p>A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners, It is, thus, essential that:</p> <ul style="list-style-type: none"><li>i. the power of expulsion must have <b>existed in a contract between the partners;</b></li><li>ii. the power has been exercised by a <b>majority of the partners;</b> and</li><li>iii. it has been exercised <b>in good faith.</b></li></ul> <p>If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.</p> <p>The test of good faith as required under Section 33(1) <b>includes three things:</b></p> <ul style="list-style-type: none"><li>a) The expulsion must be in the interest of the partnership.</li><li>b) The partner to be expelled is served with a notice.</li><li>c) He is given an opportunity of being heard.</li></ul> <p>if a partner is otherwise expelled, the expulsion is null and void.</p>



	<p>Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Vis. not valid.</p>
<b>QUES-6</b>	<p>Mr. Ram and Mr. Raheem are working as teacher in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ` 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ` 2800 and ` 200 as penalty to resume the electricity connection. Mr. John claimed ` 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ` 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partner. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ` 3000 to Mr. John?</p>
<b>Ans</b>	<p>According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved.</p> <ul style="list-style-type: none"><li>a) There must be an agreement between all the persons concerned;</li><li>b) The agreement must be to carry on some business;</li><li>c) The agreement must be to share the profits of a business and</li><li>d) The business was carried on by all or any of them acting for all.</li></ul> <p>On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no</p>



	partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim rest ₹ 1500 from Mr. Raheem.
QUES-7	Explain the Difference Between Dissolution of Partnership & Firm.
QUES-8	Explain Various Modes of Dissolution of Firm.
QUES-9	What are the rights not lost by non-registration of firm?
QUES-10	<p>Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.</p> <p>In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:</p> <ol style="list-style-type: none"><li>i. Can Mr. M validly transfer his interest in the firm by way of sale?</li><li>ii. What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? (6 Marks)</li></ol>
Ans	<p>According to Section 29 of the Indian Partnership Act, 1932,</p> <ol style="list-style-type: none"><li>i. A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the <b>transferee</b>, during the continuance of the firm, to interfere in the conduct of business, <b>or to require</b> accounts, or to <b>inspect the books</b> of the firm, but entitles the transferee only to receive the share of profits of the <b>transferring partner</b>, and the transferee shall accept the account of profits agreed to by the partners.</li><li>ii. If the firm is <b>dissolved or</b> if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining <b>partners to receive the share of the assets of the firm to which</b></li></ol>



	<p>the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.</p> <p>In the light of facts of the question and provision of law: Yes, Mr. M can validly transfer his interest in the firm by way of sale.</p>
<b>QUES-11</b>	<p>Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. (4 Marks)</p>
<b>Ans</b>	<p>Mode of Settlement of partnership accounts: As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-</p> <ol style="list-style-type: none"><li>i. Losses, including deficiencies of capital, shall be paid <b>first out of profits, next out of capital, and, lastly</b>, if necessary, by the partners individually in the proportions in which they were entitled to share profits;</li><li>ii. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:<ol style="list-style-type: none"><li>a) in paying the debts of the firm to <b>third parties</b>;</li><li>b) in paying to each partner rateably what is due to him <b>from Advances</b>;</li><li>c) in paying to each partner rateably what is due to him on <b>account of capital; and</b></li><li>d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to <b>share profits</b>.</li></ol></li></ol>
<b>QUES-12</b>	<p>Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed? (6 Marks)</p>



<b>Ans</b>	<p>Ms. Lucy while <b>drafting partnership deed must take care</b> of following important points:</p> <ul style="list-style-type: none"><li>• No particular formalities are required for an agreement of partnership.</li><li>• Partnership deed may be in writing or formed verbally. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.</li><li>• Partnership deed should be drafted with care and be <b>stamped according</b> to the provisions of the Stamp Act, 1899.</li><li>• If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under <b>the Registration Act</b>.</li></ul>
<b>QUES-13</b>	<p>(a) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? (2 Marks)</p> <p>(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)</p>
<b>Ans</b>	<p>a) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932) According to section 16, subject to contract between the partners:</p> <ol style="list-style-type: none"><li>If a partner derives any profit for himself from <b>any transaction of the firm, or from the use of the property</b> or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;</li><li>If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.</li></ol> <p>b) Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of</p>



persons is or is not a firm, or whether a person is or 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.

- a) There was an agreement between all the persons concerned
  - b) The agreement was to share the profits of a business and
  - c) the business was carried on by all or any of them acting for all.
- i. Agreement: Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.
  - ii. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
  - iii. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

**QUES-14** (a) What do you mean by Goodwill as per the provisions of Indian Partnership Act,1932? (2 Marks)



	<p>(b) With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. (4 Marks)</p>
Ans	<p>c) Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a <b>property of the firm</b>.</p> <p>Goodwill may be defined as the value of the reputation of a business house in respect of profits <b>expected in future over and above the normal level of profits earned by</b> undertaking belonging to the same class of business.</p> <p>d) <b>Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):</b></p> <ol style="list-style-type: none"><li>i. The insolvent partner cannot be continued as a partner.</li><li>ii. He will be ceased to be a partner from the <b>very date on which the order of</b> adjudication is made.</li><li>iii. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.</li><li>iv. The firm <b>is also not liable for any act of the insolvent partner after</b> the date of the order of adjudication,</li><li>v. Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent <b>will not give rise to dissolution of the firm</b>.</li></ol>
QUES-15	<p>Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. (4 Marks)</p>
Ans	<p>Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932): Every partner is liable, jointly with all the other partners <b>and also severally</b>, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third</p>



parties for all acts which come under the scope of their express or implied authority. This is because that all the acts **done within the scope of authority are the acts done** towards the business of the firm. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

**Liability of the firm for wrongful acts of a partner and for misapplication by partners** (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, -

by the wrongful act or omission of a partner 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 therefor to the same extent as the partner.**

a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, **the firm is liable to make good the loss**

**QUES-16**

State whether the following are partnerships:

- (i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.
- (ii) Two firms each having 12 partners combine by an agreement into one firm.
- (iii) A and B, co-owners, agree to conduct the business in common for profit.
- (iv) Some individuals form an association to which each individual contributes ` 500 annually. The objective of the association is





	<p>to produce clothes and distribute the clothes free to the war widows.</p> <p>(v) A and B, co-owners share between themselves the rent derived from a piece of land.</p> <p>(vi) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.</p>
Ans	<p>i. No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.</p> <p>Alternatively, this part can also be answered as below: Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.</p> <p>ii. Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.</p> <p>iii. Yes, this is a case of partnership because A &amp; B, co-owners, have agreed to conduct a business in common for profit.</p> <p>iv. No, this is not a case of partnership as no charitable association can be floated in partnership.</p> <p>v. No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.</p> <p>vi. Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.</p>
QUES-17	What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?



Ans	<p><b>Partnership for a fixed period (Indian Partnership Act, 1932):</b> Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.</p>
QUES-18	<p>M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.</p>
Ans	<p><b>I. Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):</b> Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.</p> <p><b>II. Rights of Transferee of a Partner's interest (Section 29):</b> A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring</p>



	<p>partner, and the transferee shall accept the account of profits agreed to by the partners. Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts</p>
<b>QUES-19</b>	<p>Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932.</p>
<b>Ans</b>	<p>Application for Registration (Section 58 of the Indian Partnership Act, 1932): The registration of a firm may be effected at any time <b>by sending by post</b> or <b>delivering to the Registrar</b> of the area <b>in which any place of business of the firm is situated or proposed</b> to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-</p> <ul style="list-style-type: none"><li>a. The firm's name</li><li>b. The place or principal place of business of the firm,</li><li>c. The names of any other places where the firm carries on business,</li><li>d. the date when each partner joined the firm,</li><li>e. the names in full and permanent addresses of the partners, and</li><li>f. the duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.</li></ul> <p>I. Each person signing the statement shall also verify it in the manner prescribed.</p> <p>II. A firm name <b>shall not contain any of the following words</b>, namely:-</p> <p>'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.</p>



	<p><b>Registration (Section 59):</b> When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall <b>record an entry of the</b> statement in a register called the Register of Firms and shall file the statement.</p> <p>The Firm when <b>registered shall use the brackets and word (Registered) immediately after its name.</b></p>
<b>QUES-20</b>	<p>What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932?</p>
<b>Ans</b>	<p>Conduct of the Business (Section 12 of the Indian Partnership Act, 1932): Subject to contract between the partners-</p> <ul style="list-style-type: none"><li>a. every <b>partner has a right to take part in the conduct of the business;</b></li><li>b. every partner is bound to <b>attend diligently to his duties</b> in the conduct of the business;</li><li>c. any difference arising as to ordinary matters connected with the business may be decided by <b>majority of the partners</b>, and every partner shall have the right to express his opinion before the matter is decided, but <b>no change may be made in the nature of the business without the consent of all partners; and</b></li><li>d. every partner has a right to have access to and to <b>inspect and copy any of the books of the firm.</b></li><li>e. in the event of the <b>death of a partner, his heirs or legal representatives</b> or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.</li></ul>
<b>QUES-21</b>	<p>P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances</p>



	<p>trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932.</p>
<p>Ans</p>	<p>According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with <b>the continuing partners</b> continue to be liable to any third party for acts <b>of the firm after his retirement</b> until <b>public notice of his retirement has been given either</b> by himself or by any other partner. But the retired partner will not be liable to any third party <b>if the latter deals with the firm without knowing that the former was a partner.</b></p> <p>As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.</p> <p>In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. S under the provisions of Section 32.</p> <p>Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.</p> <p>Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S.</p> <p>Therefore, S can recover the payment from the Firm, P, Q, R and E.</p>
<p>QUES-22</p>	<p>Master X was introduced to the benefits of partnership of M/s ABC &amp; 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</p>



	<p>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 &amp; Co., filed a suit against M/s ABC &amp; Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain:</p> <ul style="list-style-type: none"><li>(i) To what extent X will be liable if he failed to give public notice after attaining majority?</li><li>(ii) Can Mr. L recover his debt from X?</li></ul>
<b>QUES-23</b>	<p>M/s XYZ &amp; Associates, a partnership firm with X, Y and Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the other partners.</p> <ul style="list-style-type: none"><li>1. Examine whether action by the partners was justified or not?</li><li>2. 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?</li></ul>
<b>Ans</b>	<p><b>Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):</b> 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. The test of good faith as required under Section 33(1) includes three things:</p> <ul style="list-style-type: none"><li>• The expulsion must be in the interest of the partnership.</li><li>• The partner to be expelled is served with a notice.</li><li>• He is given an opportunity of being heard. If a partner is otherwise expelled, the expulsion is null and void.</li></ul> <p>(i) Action by the partners of M/s XYZ &amp; Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by approval of the other partners exercised in good faith to protect the interest of the partnership against the</p>



	<p>unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.</p> <p>(ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:</p> <ul style="list-style-type: none"><li>(a) the power of expulsion must have existed in a contract between the partners;</li><li>(b) the power has been exercised by a majority of the partners; and</li><li>(c) it has been exercised in good faith.</li></ul>
<b>QUES-24</b>	<p>Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.</p> <p>Explain with reasons:</p> <ul style="list-style-type: none"><li>a) Whether Ram's private estate is liable for the price of the machine purchased by the firm?</li><li>b) Against whom can the creditor obtain a decree for the recovery of the price?</li></ul>
<b>Ans</b>	<p><b>Partnership Liability:</b> The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that 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. Therefore, considering the above provisions, the problem may be answered as follows:</p> <ul style="list-style-type: none"><li>a) Ram's estate in this case will not be liable for the price of the Machinery purchased.</li></ul>



b) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner.

This is because there was not debt due in respect of the goods in Ram's life time.





## LIMITED LIABILITY PARTNERSHIP

QUES-1	State the requirement of minimum partners and designated partners of L L P and provisions relating to their Consent letter?
QUES-2	If a L L P is registered with a name which is identical with the name of an existing L L P. What is the remedy to the existing Company? What will be your answer if it identical with a registered trade marks?
QUES-3	Explain the liability of L L P for the acts of a partner?
QUES-4	The Liability of L L P and its partners can be unlimited...Comment?
QUES-5	Within what time the following documents can be submitted annually by L L P 3. Annual Return 4. Statement of Accounts and solvency
QUES-6	X & Associates L L P wants to maintain books of accounts on cash basis under single entry system. Comment?
QUES-7	1. Are Accounting standards applicable to L L P? 2. Why are Special Courts established under L L P Act?
QUES-8	1. Explain briefly the Concept of small L L P? 2. Explain briefly the procedure of change of Registered office of LLP from one state to another state?
QUES-9	State the circumstances in which LLP may be wound up?
QUES-10	How can a partner cease to be a partner of LLP? What are their rights thereafter?
QUES-11	Explain the procedure of LLsP Incorporation?



<b>QUES-12</b>	A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership". In line of above statement clearly elaborate the difference between LLP and LLC.
<b>QUES-13</b>	Discuss the conditions under which LLP will be liable and not liable for the acts of the partner under Limited Liability Partnership Act, 2008.
<b>QUES-14</b>	Enumerate the circumstances in which LLP may be wound up by Tribunal.
<b>QUES-15</b>	What are the effects of registration of LLP?
	Effect of registration (Section 14): On registration, a LLP shall, by its name, be capable of— a) suing and being sued; b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible; c) having a common seal, if it decides to have one; and d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.
<b>QUES-16</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.
	LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The



liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.



## COMPANY LAW (DEFINITIONS)

<b>QUES-1</b>	<p>ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crores and convertible preference shares worth ` 10 crores during the financial year 2022-23. After that the total share capital of the company is ` 100 crores.</p> <p>Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company.</p>
<b>Ans</b>	<p>Associate company [Section 2(6) of the Companies Act, 2013] in relation to another company, means a company in which that other company has <b>a significant influence, but</b> which is not a subsidiary company of the company having such influence and includes a joint venture company. The expression "significant influence" means control of <b>at least twenty per cent of total voting power</b>, or control of or <b>participation in business decisions under an agreement</b>.</p> <p>The term "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.</p> <p>In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crore and convertible preference shares worth `10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ` 100 crore.</p> <p>Since XYZ Limited is holding only 15% significant influence (` 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.</p> <p><b>Important Note:</b></p> <p>It can be assumed that the convertible preference shareholders are having voting rights and due to this, XYZ Limited is holding overall 25% paid up share capital in ABC Limited (with voting rights). Hence, XYZ limited is having significant control over ABC Limited and therefore XYZ is an Associate company of ABC Limited.</p>



<b>QUES-2</b>	ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ` 35 lakhs and turnover of ` 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.
<b>Ans</b>	<p>Small Company: Small Company as defined under Section 2(85) of the Companies Act, 2013 means <b>a company, other than a public company—</b></p> <ul style="list-style-type: none"><li>(i) paid-up share capital of which does not exceed ` 4 crore or such higher amount as may be prescribed which shall not be more than ` 10 crore; and</li><li>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ` 40 Crore or such higher amount as may be prescribed which shall not be more than ` 100 crore:</li></ul> <p><b>Exceptions:</b> This clause shall not apply to:</p> <ul style="list-style-type: none"><li>a) a holding company or a subsidiary company;</li><li>b) a company registered under section 8; or</li><li>c) a company or body corporate governed by any special Act.</li></ul> <p>In the instant case, since the paid-up capital of ABC Private Limited is ` 35 Lakhs and turnover is ` 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.</p>
<b>QUES-3</b>	Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ` 10 crore in the form of 10,00,000 shares of ` 100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?



<b>Ans</b>	<p>According to the provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-</p> <ul style="list-style-type: none"><li>(i) the Central Government, or</li><li>(ii) by any State Government or Governments, or</li><li>(iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.</li></ul> <p>According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.</p> <p>By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.</p>
<b>QUES-4</b>	<p>The paid-up share capital of Advanced Castings Private Ltd. is ` One crore consisting of 8,00,000 equity shares of ` 10 each fully paid-up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in Advanced Castings Private Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are the subsidiaries of Unique Machineries Pvt. Ltd. Examine with reference to the provisions of the Companies Act whether Advanced Castings Private Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique</p>



	Machineries Pvt. Ltd. controls the composition of board of Directors of Advanced Castings Private Ltd.?	
<b>Ans</b>	First Define Subsidiary Company	
	Total ESC of Advanced Castings Pvt. Ltd.	- Is Rs 80,00,000
	ESC held by Quality Forgings Pvt. Ltd. In Advance Castings Pvt. Ltd.	- Is Rs 30,00,000
	ESC held by Supreme Engineering Pvt. Ltd. In Advanced Castings Pvt. Ltd.	- Is Rs 15,00,000
	ESC held by Unique Machineries Pvt. Ltd in Advanced Castings Pvt. Ltd.	- Is Rs 45,00,000 since for the purpose of determining holding subsidiary relationship, ESC held in Advanced Castings (Private) Ltd. By its Subsidiaries Quality Forgings Pvt. Ltd. (viz. ` 30,00,000) and Supreme Engineering Pvt. Ltd. (viz. ` 15,00,000) shall be considered.
	Advanced Castings Pvt. Ltd. Is a subsidiary of Unique Machineries Pvt. Ltd.	- Since Unique Machineries Pvt. Ltd. Holds more than one-half of ESC of Advanced Castings Pvt. Ltd.
	Answer would remain same	- Even if Unique Machineries Pvt. Ltd. Controls the composition of Board of Directors of Advanced Castings Pvt. Ltd.
<b>QUES-5</b>	(a) The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below: (1) Paid-up equity share capital ` 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ` 10 each. There is no change in the paid-up share capital thereafter.	



	<p>(2) The turnover is ` 2,00,00,000. It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013:</p> <p>(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?</p>
<p><b>Ans</b></p>	<p>According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having- (A) paid-up share capital not exceeding two crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and (B) turnover as per profit and loss account for the immediately preceding financial year not exceeding twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees: Provided that nothing in this clause shall apply to a holding company or a subsidiary company. Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies. In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ` 10 totalling ` 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company.</p>





<b>QUES-6</b>	Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.
<b>Ans</b>	According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which – (a) <b>has a place of business in India whether</b> by itself or through an agent, physically or <b>through electronic mode; and</b> (b) conducts any business activity in India in any other manner. According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, <b>whether main server is installed in India or not, including, but not limited</b> to online services such as telemarketing, telecommuting, telemedicine, education and information research. Looking to the above description, it can be said that being involved in telemarketing in India having its main server for online business outside India, Herry Limited will be treated as foreign company.
<b>QUES-7</b>	Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company. (6 Marks)
<b>Ans</b>	According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which,- (a) <b>has a place of business in India whether</b> by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner. As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "electronic mode", means <b>carrying out electronically based,</b>



	<p>whether main server is installed in India or not, including, but not limited to- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions; (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India; (iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management; (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and (v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise; In the given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.</p>
<b>QUES-8</b>	<p>MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid Up Share Capital of ` 45 lakh and turnover of ` 45 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:</p> <ol style="list-style-type: none"><li>Whether the MNP Private Ltd. can avail the status of small company?</li><li>What will be your answer if the turnover of the company is ` 1.50 crore? (6 Marks)</li></ol>
<b>Ans</b>	<p>Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—</p> <ol style="list-style-type: none"><li>paid-up share capital of which does not exceed four crores rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and</li><li>turnover of which as per its last profit and loss account does not exceed Forty crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.</li></ol> <p>Nothing in this clause shall apply to—</p>

	<p>a) a holding company or a subsidiary company;</p> <p>b) a company registered under section 8; or</p> <p>c) a company or body corporate governed by any special Act.</p> <p>i. In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 45 lakh and having turnover of ` 3 crore. Since only one criteria of share capital of ` 4 crores is met, but the second criteria of turnover of ` 40 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.</p> <p>If the turnover of the company is, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.</p>
<b>QUES-9</b>	<p>Actavis Ireland Ltd. a pharma firm incorporated in Ireland :</p> <p>i. has a share transfer office in Kanpur</p> <p>ii. Directors of the company frequently stayed in a hotel in Noida and Mumbai for looking after matters of business, the company does not have any physical office or property in India</p> <p>iii. As a practising Company Secretary, advise under the provisions of the Companies Act, 2013, whether the company will be treated as having place of business in India ?</p>
<b>Ans</b>	<p>As per Section 2(42) of the Companies Act, 2013, 'Foreign Company' means any company or body incorporated outside India which –</p> <p>a) has a place of business in India whether by itself or through an agent physically or through electronic mode; and</p> <p>b) conducts any business activity in India in any other manner</p> <p>As per Section 386(c) of the Companies Act, 2013, for the purpose of Chapter XXII, which provides the provision for foreign companies, states that the expression "place of business" includes a share transfer or registration office.</p>



	<p>The similar was held in the case of <i>Tovarishestvo Manufacture Liudivg Rabenek, Re</i> (1944). In the case, the court was of the opinion that where representative of a Company incorporated outside the country, frequently stayed in a hotel in England for looking after the matter of the business, then it would be assumed that the company had a place of business in England. In certain other cases also, it was held that mere holding of property cannot tantamount to having a place of business in India.</p> <p>Accordingly, applying the above proposition in the given case, it would be advisable to the <i>Actavis Ireland Ltd.</i>, a Pharma Firm, incorporated in Ireland, that it has –</p> <ol style="list-style-type: none"><li>i. A share transfer office in Kanpur which constitutes a place of business in India and</li><li>ii. Its Directors frequently stayed in a hotel in Noida and Mumbai for looking after matter of business. Though the Company does not have any physical office or property in India, it would be treated as having a place of business in India.</li></ol>
<p><b>QUES-10</b></p>	<p>Luv Ltd. has entered into a contract with Kush Ltd. by which Kush Ltd. will control 22% of the sale and disposal of the output of Luv Ltd. Enumerate the nature of relationship between both Companies.</p>
<p><b>Ans</b></p>	<p>As per Section 2(6) of the Companies Act, 2013, "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>"Significant Influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.</p> <p>In the given case, Kush Ltd. controls more than 20% of the sale and disposal of the output of Luv Ltd. Thus Luv Ltd. is the associate of Kush Ltd. But Luv Ltd. neither influences the business decision of Kush Ltd.</p>



	<p>in any manner nor does it control 20% of the total share capital of Kush Ltd. Hence Kush Ltd. cannot be called an associate of Luv Ltd.</p>
<b>QUES-11</b>	<p>Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After some time, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:</p> <ol style="list-style-type: none"><li>i. Whether Jagannath Oils Limited is required to reduce the number of members.</li><li>ii. Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017?</li></ol>
<b>Ans</b>	<p>According to Section 2(68) of Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—</p> <ol style="list-style-type: none"><li>i. restricts the right to transfer its shares;</li><li>ii. except in case of One Person Company, limits the number of its members to two hundred: Provided that 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:</li></ol> <p>Provided further that—</p> <ol style="list-style-type: none"><li>a) persons who are in the employment of the company; and</li><li>b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and</li><li>c) Hints: <math>220 - 45 = 195</math></li></ol>



## COMPANY LAW (OPC)

<b>QUES-1</b>	<p>Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013.</p>
<b>Ans</b>	<p>As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) –</p> <ul style="list-style-type: none"><li>- Shall be eligible to incorporate an OPC</li><li>- Shall be a nominee for the sole member.</li></ul> <p>In the given case, Mr. R is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Hence, Mr. R is eligible to incorporate an OPC.</p> <p>Also, even though Mr. S's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Hence, S's name cannot be given as nominee in the memorandum.</p>
<b>QUES-2</b>	<p>Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ` 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013?</p>



<b>Ans</b>	<p>Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.</p> <p>A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.</p> <p>In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.</p>
<b>QUES-3</b>	<p>Rohan incorporated a "One Person Company". The memorandum of OPC indicates the name of his brother Vinod as the nominee of OPC. However, Vinod is starting his new business in abroad and needs to leave India permanently. Due to this fact, Vinod is withdrawing his consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below:-</p> <ol style="list-style-type: none"><li>1. If is it mandatory for Vinod to withdraw his nomination in the said OPC</li><li>2. Can Rohan make his 17 year old son as a nominee in such a case. (4 Marks)</li></ol>
<b>Ans</b>	<ol style="list-style-type: none"><li>1. Yes, it is mandatory for Vinod to withdraw his nomination in the said OPC as he is leaving India permanently as only a natural person who is an Indian citizen and resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year shall be a nominee in OPC.</li></ol> <p>Since Vinod will not satisfy this condition, so he needs to withdraw</p>



	<p>his nomination.</p> <p>2. No, Rohan cannot make his 17 year old son as a nominee of his OPC as no minor shall become member or nominee of the OPC or can hold beneficial interest.</p>
<b>QUES-4</b>	Explain the procedure of conversion of OPC into a private Co.





## COMPANY LAW (DOCTRINES)

<b>QUES-1</b>	<p>Articles of Association of XYZ Private Limited provides that Board of Directors can take the loan upto ` 50,00,000 for company by passing the Board Resolution. In the case where the loan amount is in excess of the said limit, Special Resolution is required to be passed in general meeting. Due to urgent need of funds, Board of Directors applied for loan in a reputed bank for` 60,00,000 without passing the Special Resolution in the general meeting. Board of Directors gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lend the money. On demanding the repayment of loan, company denied the payment as the act was ultra vires to company. Advise.</p>
<b>Ans</b>	<p>According to doctrine of Indoor Management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not enquire into the regularity of internal proceedings as required by M &amp; A. This was also decided in case of Royal British Bank Vs. Turquand.</p> <p>In the instant case, Articles of Association of XYZ Private Limited have taken loan from reputed bank for ` 60,00,000 by passing Board Resolution while Special Resolution was necessary for such amount. Board of Directors gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lends the money.</p> <p>On the basis of provisions of doctrine of Indoor Management, the bank can claim the amount of his loan from the company. The bank can believe on the undertaking given by board and no need to enquire further.</p>
<b>QUES-2</b>	<p>Mr. Sunny sold his business of cotton production to a cotton production company CPL Private Limited in which he held all the shares except</p>



	<p>one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited but in his own name not in the name of company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sunny filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim? (3 Marks)</p>
<p><b>Ans</b></p>	<p>According to the decision taken in case of <b>Salomon v/s Salomon &amp; Co. Ltd.</b>, a company has separate legal entity. A company is different from its members. Further, according to the decision taken in case of <b>Macaura v/s Northern Assurance Co. Ltd.</b>, a member or creditor does not have any insurable interest in the property of company. Members or creditors of the company cannot claim ownership in the property of company.</p> <p>On the basis of above provisions and facts, it can be said Mr. Sunny and CPL Private Limited are separate entities. Mr. Sunny cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sunny for the claim for the loss of stock by fire.</p>
<p><b>QUES-3</b></p>	<p>ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires.</p> <p>With reference to the same, briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company? (6 Marks)</p>
<p><b>Ans</b></p>	<p>Doctrine of ultra vires: 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</p>



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 authorised 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.

An act which is ultra vires the company being void, cannot be ratified even by the unanimous consent of all the shareholders of the company. Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of memorandum of association as it becomes ultra vires and thus null and void.

**QUES-4**

Mr. Raj formed a company with a capital of ₹ 50,000. He sold his business to another company for ₹ 40,000. For the payment of sale, he accepted shares worth ₹ 30,000 (3000 shares of ₹ 1 each). The balance 10,000 was considered as loan and Mr. Raj secured the amount by issue of debentures. His wife and three daughters took one share each. Owing to strike the company was wound up. The assets of the company were valued at ₹ 6000. The debts due to unsecured creditors were ₹ 8000.



	<p>Mr. Raj retained the entire sum of ` 6000 as part payment of loan. To this, the other creditors objected. Their contention was that a man could not own any money to himself, and the entire sum of ` 6000 should be paid to them.</p> <p>Examine the rights of Mr. Raj and other creditors. Who will succeed? (3 Marks)</p>
<b>Ans</b>	<p><b>Separate Legal Entity:</b> Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.</p> <p>The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.</p> <p>Thus, the shareholders are protected from the acts of the company. The leading case law of Saloman Vs Saloman and Company Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members.</p> <p>Based on the above discussion and provisions, Mr. Raj was entitled to the assets of the company as he was a secured creditor of the company and the contention of the creditors that Mr. Raj and the company are one and same person is wrong.</p>
<b>QUES-5</b>	<p>Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-</p>



	<p>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.</p> <p>Analyse the situation and decide whether Mr. X is free from his liability.</p>
<b>Ans</b>	<p><b>Doctrine of Indoor Management:</b> The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an <b>outsider is entitled to assume that all the detailed formalities for doing that act have been observed.</b></p> <p>The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.</p> <p>In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.</p>
<b>QUES-6</b>	<p>With the approval of the Board, an amount of `50 crore was spent by speed Jet Ltd. in producing a commercial film, not covered under its</p>



	<p>objects clause. The film was a complete flop and the company lost an amount of `40 crore. Some of the members of the company objected to such investments not covered by the objects clause of the company. They filed a suit in the court of law making the directors personally responsible and to make good the loss. Will they succeed? Support your answer with reasons</p>
<b>Ans</b>	<p>The Board has approved an Act which is outside the purview of the objects clause of the company. Thus, the Act amounts to be an Act of ultra vires, beyond the power of the companies, due to which the company had suffered loss of ` 40 crores. The member had filed a suit against the director making them personally liable. In such a case, the Act is ultra vires and the directors are personally liable for such an Act. The doctrine of ultra vires is based on the principle of protection to shareholders. Hence. the shareholders can succeed against the directors and can recover the loss from the directors.</p>
<b>QUES-7</b>	<p>The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however entered into an agreement with Q to supply 100 laptops of worth `5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act, 1956. Hints-Doctrine of Ultra-Vires</p>
<b>QUES-8</b>	<p>Z,A Chemical manufacturing company distributed 40 lac to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 1956 decide whether the said distribution of money was "Ultra vires"the company?</p>



<b>Ans</b>	<p>HINTS: From the above facts it appears this donation is not Ultra Vires the company. It is for the growth of the company and can be said to be incidental or ancillary to main objects of the company</p>
<b>QUES-9</b>	<p>The objects clause of the Memorandum of Association of the XYZ (Pvt.) Ltd., New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company, subsequently, refused to admit the liability to 'A' on the ground of "ultra vires the Company".</p> <p>Advice, whether stand of the company is legally valid and if so, give reasons in support of your answer.</p>
<b>Ans</b>	<p>HINTS: M/s XYZ Pvt. Ltd. is authorized to trade directly in mangoes. It has no power to enter into a partnership with Mr. A. These type of acts can never be treated as 'express' or 'implied' powers of the company.</p>
<b>QUES-10</b>	<p>Discuss effects of Ultra Vires transactions.</p>
<b>Ans</b>	<p>Effects of ultra vires transactions</p> <p>An Act which is ultra vires the company is void ab initio.</p> <p>Directors will be personally liable for such breach of trust.</p> <p>Any member may obtain an injunction order from the Court, i.e., an order of the Court restraining the company from proceeding with the ultra vires contract.</p> <p>If the company acquires some property under an ultra vires transaction, the company has the right to hold that property and protect it against damage by other parties.</p>



<b>QUES-11</b>	A company was incorporated on 6th October 2003. The Certificate of incorporation was issued by the Registrar on 15th October 2003. The company on 10th October 2003 entered in to a contractual liability. The company denies from the said liability on the ground that the company is not bound by contract entered in to prior to issuing of certificate of incorporation. Decide, under the provisions of Companies Act, whether the company can be exempted from its contractual liability ?Pre Incorporation Contract .
<b>QUES-12</b>	A Company issued a bond under its common seal signed by two Directors. The Articles provided that the directors might borrow on bond such sums as they should be authorized by an ordinary resolution of the Company. No such resolution was passed. Is the Co. liable on the bond?
<b>Ans</b>	Yes. The Company is liable on the bond. The outsiders dealing with the Company are entitled to assume that as far as the internal proceedings of the Company are concerned, everything has been regularly done. They are bound to read the registered document and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum or Articles. (Royal British Bank vs. Turquand). balls she had accepted the offer. In case of general offer it is not necessary to communicate the acceptance.
<b>QUES-13</b>	The authorised signatory of a Co. issued a share certificate in favour of X, which apparently complied with the Company's articles as it was purported to be signed by two directors and the secretary and it had the Company's common seal affixed to it. Infact, the secretary had forged the signatures of the Directors and affixed the seal without any authority. Will the certificate be binding upon the Company?





<b>Ans</b>	HINTS: The certificate issued by the secretary by having forged the signatures of the directors and affixed the seal without any authority will not be binding upon the Company
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## COMPANY LAW (OTHER TOPICS)

QUES-1	What do you mean by Share Capital? Explain various types of share capital
QUES-2	Explain the difference between MOA, AOA
QUES-3	What are the consequences if a Co is formed by furnishing false information?
	<p>Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—</p> <p>(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or</p> <p>(b) direct that <b>liability</b> of the members shall <b>be unlimited</b>; or</p> <p>(c) direct <b>removal of the name of the company</b> from the register of companies; or (d) pass an order <b>for the winding up of the company</b>; or</p> <p>(e) pass such other orders as it may deem fit:</p> <p>Provided that before making any order under this sub-section,—</p> <p>(i) the company shall be given a reasonable opportunity of being heard in the matter; and</p> <p>(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.</p>
QUES-4	Explain briefly various clauses of MOA



<p><b>QUES-5</b></p>	<p>A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act. Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013. (5 Marks)</p>
<p><b>Ans</b></p>	<p>According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the <b>Central Government that</b> a person or an association of persons proposed to be registered under this Act as a limited company— (a) <b>has in its objects the promotion</b> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object; (b) <b>intends to apply its profits, if any, or other income</b> in promoting its objects; and (c) <b>intends to prohibit the payment of any dividend</b> to its members; the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company. In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.</p>



<p><b>QUES-6</b></p>	<p>State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company. (i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions. (ii) Whether the Company may be wound up? (iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking? (5 Marks)</p>
<p><b>Ans</b></p>	<p>(i) According to Section 8(6) of the Companies Act, 2013, the Central Government may by <b>order revoke the licence of the company where the company contravenes any of the requirements or the</b> conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. Hence, in the instant case, the Central Government can revoke the license given to State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8. (ii) <b>Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest,</b> direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)] Hence, the stated company may be wound up (iii) A company registered under this section shall</p>



amalgamate only with another company registered under this section and having similar objects. [Section 8(10)] In the instant case, State Cricket Club cannot be merged with Cool Net Private Limited as the objects of both the companies are different and not similar









