

# CA FOUNDATION LAW

## TOP 100 CASE BASED QUESTIONS

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1. Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs 20, 000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?

A. In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract. In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it. Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

2. Point out with reason whether the following agreements are valid or void:

- a. Kamala promises Ramesh to lend Rs 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- b. Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- c. Ram sells the goodwill of his shop to Shyam for Rs 4,00,000 and promises not to carry on such business forever and anywhere in India.
- d. In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- e. Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

Ans.

Validity of agreements

- a. **Void Agreement:** As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

- b. Void Agreement:** As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- c. Void Agreement:** As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- d. Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- e. Valid Agreement:** An agreement with alien friend is valid, but an agreement with alien enemy is void.

3. M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 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. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

**Answer:** Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non - performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of Rs 1.25 lakh (i.e. Rs 12.75 minus Rs 11.50 = Rs 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti

Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

4. Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ` 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

- (i) Does the hotel have the right to end the contract?
- (ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the case – (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach?

Ans. By analysing Section 39 of the Indian Contract Act, 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee):

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers.

In the given case,

- (i) Yes, the hotel has the right to end the contract with Rahul, the DJ.
- (ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.
- (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

5. Mr. Sooraj promises Mr. Manoj to paint a family picture for ` 20,000 and assures to complete his assignment by 15<sup>th</sup> March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1<sup>st</sup> March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15<sup>th</sup> March, 2023 against a payment of ` 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation? Decide as per the provisions of the Indian Contract Act, 1872.

Ans. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. Sooraj had promised to deliver some photographs to Mr. Manoj, the legal representatives of Mr. Sooraj shall be bound to deliver the photographs in this situation.

6. Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.
- a. 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.
  - b. 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.

Ans. 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. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

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.

- a. 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.

- b. 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 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.
7. X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

**Answer: Agreement in Restraint of Trade:** Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

8. A received certain goods from B promising to pay Rs 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of Rs 1,00,000. Discuss whether the contention of B is right?

**Answer:** As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e. Rs 40,000 and not for the whole amount.

9. 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 necessities 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 necessities 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.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872: Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions? What is the maximum amount- of money that can be recovered by Mr. M? Shall the provisions of the above act also apply to the medical treatment given to the grandmother?

Ans. As per the provisions of the Indian Contract Act 1872, every person who has attained the age of majority, who is of sound mind and is not otherwise disqualified by the contract, is competent to contract.

As per the provisions of the Indian Contract Act 1872, a supplier is entitled to recover the price

from the property of the incompetent person:

- ✓ where necessities are supplied to a person who is incapable of contracting, or
- ✓ to someone whom he is legally bound to support.

Facts of the case:

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 necessities to both of them.

Mr Y and his grandmother used to live in the house built by his parents. Mr M also provided

some financial assistance for the grandmother's emergency medical treatment. After

supplying necessaries to Mr Y for 4 years, Mr M approached the former, asking him to pay back

₹15 Lakhs, inclusive of ₹7 Lakhs incurred for the medical treatment of his grandmother. Mr Y pleaded that he had got his parent's jewellery to sell to a maximum value of ₹4 Lakhs. Mr M threatened Mr Y to file a legal suit to recover money.

Conclusion: i) In the present case, Mr M can file a suit to recover money from Mr Y as Mr M had supplied necessaries to Mr Y and also provided support to Mr Y's grandmother, a person whom Mr Y is legally bound to support. ii) The maximum amount of money Mr M can recover from Mr Y is 4 Lakhs' of jewellery along with the recovery from Mr Y's private estate (his parent's house). However, Mr Y shall not be personally liable for such recovery. iii) Yes. The above provisions shall also be applicable to the medical treatment given to the grandmother of Mr Y as she is the person whom Mr Y is legally bound to support.

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10. De  
cide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- a. Vijay agrees with Saini to sell his black horse for Rs 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- b. Sarvesh sells the goodwill of his shop to Vikas for Rs 10,00,000 and promises not to carry on such business forever and anywhere in India.
- c. Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

**Answer:**

- d. As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact are void. In this case, there is mistake of fact as to the existence of the subject - matter, i.e., with respect to the selling of horse which was dead at the time of the agreement. It is unknown to both the parties. Therefore, it is a void agreement.
- b. As per Section 27 of the Indian Contract Act, 1872, an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business, provided that the conditions must be reasonable regarding the duration and place of the business. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.
- c. As per section 2(j) of the Contract Act, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

11. Ra  
**m consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930?**

**Answer: Condition and warranty (Section 12):** A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated".

12.

Mr.

Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay ₹20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872: - a) Can Mr. Singhania terminate the contract with Mr. Sonu? b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything? c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything?

According to Section 40 of the Indian Contract Act, 1872, if it was the intention of the parties that the promise should be performed by the promisor himself, the promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. Facts of the case: Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay ₹20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhania terminated the contract. Conclusion: Therefore, in the instant case, a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract. b) In the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu. c) In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

13.

Mr

J entered into an agreement with Mr S to purchase his (Mr S's) motor car for ₹5,00,000 within a period of three months. A security amount of ₹20,000 was also paid by Mr J to Mr S in terms of the agreement. After completion of three months of entering into the agreement, Mr S tried to contact Mr J to purchase the car in terms of the agreement. Even after the lapse of another three-month period, Mr J neither responded to Mr S nor to his phone calls. After the lapse of another six months, Mr J contact Mr S and denied purchasing the motor car. He also demanded back the security amount of ₹20,000 from Mr S. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr S is required to refund the security amount to Mr J. Also, examine the validity of the claim made by Mr J, if the motor car would have destroyed by accident within the three month's agreement period. (ICAI SM)

Ans. As per provision 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. Fact of the case: Mr J entered into an agreement with Mr S to purchase his (Mr S's) motor car for ₹5,00,000 within a period of three months. A security amount of ₹20,000 was also paid by Mr J to Mr S in terms of the agreement. After completion of three months of entering into the agreement, Mr S tried to contact Mr J to purchase the car in terms of the agreement. Even after the lapse of another three-month period, Mr J neither responded to Mr S nor to his phone calls. After the lapse of another six months, Mr J contact Mr S and denied purchasing the motor car. He also demanded back the security amount of ₹20,000 from Mr S. Conclusion: The contract is not void. Mr S is not responsible for Mr J's negligence. Therefore, Mr S can rescind the contract and retain the security amount since the security is not a benefit received. It is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car. In the second situation, 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 S is required to be refunded back to Mr J.

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14.

Mr.

X was a Disk Jockey at a five-star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr. X will be paid ₹1500 per day. However, after a month, Mr. X wilfully absents himself from the performance. i) Does the hotel have the right to end the contract? ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently? iii) In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach? (Nov 2021 RTP, June 2022)

Ans. According to the provision of the Indian Contract Act, 1872, when a party to a contract has refused to perform or disable himself from performing his promise in its entirety, the promisee may put an end to the contract or may decide to continue with the contract. Facts of the case: Mr. X was a Disk Jockey at a five-star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr. X will be paid ₹1500 per day. However, after a month, Mr. X wilfully absents himself from the performance. Conclusion: In the given case: i) Yes, the hotel has the right to end the contract with Mr. X, the DJ. ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently. iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

15.

Mr.

Mukund wants to sell his car. For this purpose, he appoints Mr. Parth, a minor as his agent. Mr. Mukund instructs Mr. Parth that car should not be sold at price less than ₹2,00,000. Mr. Parth ignores the instruction of Mr. Mukund and sells the car to Mr. Naman for ₹1,50,000. Explain the legal position of contract under Indian Contract Act, 1872 whether: a) Mr. Mukund can recover the loss of ₹50,000 from Mr. Parth? b) Mr. Mukund can recover his car from Mr. Naman?

Ans. According to the provisions of Section 11 of Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts. In the instant case, Mr. Mukund appoints Mr. Parth, a minor as his agent to sale his car. Mr. Mukund clearly instructed to Mr. Parth that the minimum sale price of the car should be ₹2,00,000 yet

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Mr. Parth sold the car to Mr. Naman for ₹1,50,000. a) Considering the facts, although the contract between Mr. Mukund and Mr. Parth is valid, Mr. Parth will not be liable to his principal for his acts. Hence, Mr. Mukund cannot recover the loss of ₹50,000. b) Further, Mr. Naman purchased the car from agent of Mr. Mukund, he got good title. Hence, Mr. Mukund cannot recover his car from Mr. Naman.

16.

Mu

kesh 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?

Ans.

According to Section 27 of the Indian Contract Act, 1872, any agreement that restrains a person from carrying on a lawful trade, profession or business is a void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided - i) Where the restraint is to refrain from carrying on a similar business, ii) The restraint should be within the specified local limits, iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price, iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court. In the given case, Mukesh has sold 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. Hence, Rohit cannot take any legal action against Mukesh as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between in restraint of trade between Mukesh and Rohit is void agreement.

17.

Ka

shish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a

show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of Indian Contract Act, 1872? (7 Marks)

Answer-

Provisions-Agreement in restraint of trade (Section 27):

An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to certain exceptions on amongst other includes sale of Goodwill Where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, such an agreement is valid. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

Facts of the Case-Kashish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement.

Conclusion-

In the given case, Naman will not succeed in filing the suit as the agreement is void regarding the clause restraining the business of real jewellery as buyer can refrain seller from doing similar business only.

18.

Ms.

Laalia, a film star, agreed to act exclusively for a particular producer, Mr, RanakJohar, for one year. During the year she contracted to act for some other producer, Yash Raj Films and started working under their production house as well. Mr. RanakJohar wants to proceed against Ms. Laalia for breach of contract. Specify what remedy Mr. Ranak will have against Ms. Laalia. (4 Marks)

Answer-

**Provisions-**

Suit for Injunction- Where a party is negating the terms of a contract, the court may be issuing 'injunction order' restrain him from doing what he promised not to do.

**Facts of the case-**

Ms. Laalia, a film star, agreed to act exclusively for a particular producer, Mr, RanakJohar, for one year. During the year she contracted to act for some other producer, Yash Raj Films

and started working under their production house as well. Mr. RanakJohar wants to proceed against Ms. Laalia for breach of contract.

### Conclusion-

In the given case, Ms. Laalia can be restrained from working under Yash raj films by the court through issue of Injunction orders.

19. A  
& B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

Ans. In this case, the Court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

20. O  
On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @ `900; 'M' @ 1,000 and 'L' @ 1,100 per piece have to be supplied on or before 31st May, 2023. However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ` 1,000; ` 1,100; and ` 1,200 for 'S', 'M' and 'L' sizes respectively. Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872.

Ans. As per the provisions of Section 39 of the Indian Contract Act, 1872, 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.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

(i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or

(ii) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ` 90,000 [300 piece @ ` 100 (Small), 300 piece @ ` 100 (Medium) and 300 piece @ ` 100 (Large)].

21. PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for ` 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ` 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from PM Ltd.

Ans - Section 73 of the Indian Contract Act, 1872 provides for compensation for loss or damage caused by breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of ` 1.25 lakhs (i.e. ` 22.75 lakhs - ` 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

22. A  
guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay rupee five per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. Later on B defaults in the payment and C asks B to make the payment. Will A be liable as a surety? (4 Marks)

Answer-

Provisions-

Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid .

Facts of the Case-

A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay rupee five per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A.

Conclusion-

In the given case, A shall not be liable to make the payment as the guarantee was procured by means of misrepresentation concerning a material part of the transaction.

23.

Ar

vind took from Bali, his friend, a carriage along with a pair of horses for his holiday trip. Bali gave his carriage without charging any rentals. During the journey a bolt in the underpart of the carriage broke away. As a result of this, the carriage became upset and Arvind was injured. Arvind wants to claim the damage from Bali. Will he succeed in his claim?(5 Marks)

Answer-

As per the provisions of the Indian Contract Act, 1872, In case of a Gratuitous Bailment The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

However, Bailor will not be liable if he was not aware of such faults.

Facts of the Case-

Arvind took from Bali, his friend, a carriage along with a pair of horses for his holiday trip. Bali gave his carriage without charging any rentals. During the journey a bolt in the underpart of the carriage broke away. As a result of this, the carriage became upset and Arvind was injured.

Conclusion-

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In the given case, Bali will not be liable for damage caused to Arvind as he was not aware of such faults.

24.

Rahul, a transporter, was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market, where he was stranded, fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority? (3 Marks)

Ans.

Provision : As per the provisions of the Indian Contract Act, 1872, an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Facts of the case: In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Conclusion: Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss on the ground that he has acted beyond his authority.

25.

Sooraj sold 10 acres of his agricultural land to Mr. Murli on 25th September 2019 for Rs. 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chander, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2019, Mr. Sooraj died leaving behind his son and wife. On 15th October, 2019 Mr. Murli started construction of an auditorium on the whole 10 acres of land and denied any land to Mr. Chander. Now Mr. Chander wants to file a case against Mr. Murli and get a suitable remedy. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chander's plan of action?

Ans.

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Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India. In the given problem, Mr. Sooraj has entered into a contract with Mr. Murli, but Mr. Chander has not given any consideration to Mr. Murli but the consideration did flow from Mr. Sooraj to Mr. Murli on the behalf of Mr. Chander and such consideration from third party is sufficient to enforce the promise of Mr. Murli to allow Mr. Chander to use 1 acre of land. Further the deed of sale and the promise made by Mr. Murli to Mr. Chander 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. Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller." In such a case, third party to a contract can file the suit although it has not moved the consideration

26.

Ra

mu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase in spite of the higher rate. Afterwards, Ramu comes to know that the goods purchased belonged to Prem himself. Decide whether Ramu is bound by ratification done

Ans. As per the provisions of the Indian Contract Act, 1872, no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. If, however, the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of the facts. Facts of the case: Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase in spite of the higher rate. After wards, Ramu comes to know that the goods purchased belonged to Prem himself. Conclusion: In the present case, Ramu is not bound by the ratification as Ramu has no knowledge of the fact that the goods purchased by him

were of Prem's. But, if Ramu is willing to take the risk, then he can choose to ratify such an act.

27.

X

had made an agency agreement with Y to authorise him to purchase goods on behalf of X for the year 2020 only. The agency agreement was signed by both, and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum up to the value of ₹10 Lakhs only. In the month of April 2020, Y has purchased a single item of ₹12 Lakhs from Z as an agent of X. The market value of the item purchased was ₹14 Lakhs, but a discount of ₹2 Lakhs was given by Z. The agent Y has purchased this item due to the heavy discount offered and a financial benefit to X. After the delivery of the item, Z has demanded the payment from X as Y is the agent of X. But, X refused to make the payment stating that Y has exceeded his authority as an agent, therefore, he is not liable for this purchase. Z has filed a suit against X for the payment. Decide whether Z will succeed in his suit for the recovery of the payment as per the provisions of the Indian Contract Act, 1872. (Nov 2020)

Ans. As per the provisions of the Indian Contract Act, 1872, where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it; the principal is not bound to recognise the transaction. Facts of the case: X had made an agency agreement with Y to authorise him to purchase goods on behalf of X for the year 2020 only. The agency agreement was signed by both, and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum up to the value of ₹10 Lakhs only. In the month of April 2020, Y has purchased a single item of ₹12 Lakhs from Z as an agent of X. The market value of the item purchased was ₹14 Lakhs, but a discount of ₹2 Lakhs was given by Z. The agent Y has purchased this item due to the heavy discount offered and a financial benefit to X. After the delivery of the item, Z has demanded the payment from X as Y is the agent of X. But, X denied to make the payment stating that Y has exceeded his authority as an agent, therefore, he is not liable for this purchase. Z has filed a suit against X for the payment. Conclusion: In the present case, Y has exceeded his authority by buying an item worth ₹12 Lakhs, exceeding the limit of ₹10 Lakhs for which he was authorised. So, here Z cannot recover the amount from X. X is not bound by the whole transaction.

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28.

Aa

rthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Rainbow Silks, Jaipur would succeed? (ICAI SM)

Ans. As per the provisions of the Indian Contract Act, 1872, an agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent of her husband). If the wife lives with her husband, there is a legal presumption that a wife has the authority to pledge her husband's credit for necessities. But the legal presumption shall be invalid in the following cases: i) Where the goods purchased on credit are not necessities. ii) Where the wife is given sufficient money for purchasing necessities. iii) Where the wife is forbidden from purchasing anything on credit or contracting debts. iv) Where the trader has been expressly warned not to give credit to his wife. Facts of the case: Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Conclusion: In the present case, M/s Rainbow Silks shall recover the said amount from Naresh if sarees purchased by Aarthi are necessities for her.

29.

Mr

Manoj engaged Mr Ayush as his agent to buy a house in the West Extension area. Mr Ayush bought a house for ₹50 lakhs in the name of a nominee and then purchased it himself for ₹54 lakhs. He then sold the same house to Mr Manoj for ₹56 lakhs. Mr Manoj later comes to know the mischief of Mr Ayush and tries to recover the excess amount paid to Mr Ayush. Is he entitled to recover any amount from Mr Ayush? If so, how much? Explain with the help of provisions of the Indian Contract Act, 1872. (ICAI SM, May 2016, May 2018 RTP)

Ans. As per the provisions of the Indian Contract Act, 1872, where an agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal may: ✓ Repudiate the transaction if the case shows either that the agent has dishonestly concealed any material fact from him or that the dealings of the agent have been disadvantageous to him. ✓ Claim from the agent any benefit,

which may have resulted to him from the transaction. Facts of the case: Mr Manoj engaged Mr Ayush as his agent to buy a house in the West Extension area. Mr Ayush bought a house for ₹50 lakhs in the name of a nominee and then purchased it himself for ₹54 lakhs. He then sold the same house to Mr Manoj for ₹56 lakhs. Mr Manoj later comes to know the mischief of Mr Ayush and tries to recover the excess amount paid to Mr Ayush. Conclusion: In the present case, Mr Manoj is entitled to recover ₹6 lakhs from Mr Ayush, being the amount of profit earned by Mr Ayush out of the transaction

30.

Mr

Truth deposited 100 bags of groundnut in his factory of Mr False for safe keeping. Mr False mixed the ground-nut bags with the other ground-nut bags in the factory with the consent of Mr Truth and consumed them to produce edible oil. i) Whether Mr Truth is entitled to claim his share in the edible oil. Produced under the provisions of the Indian Contract Act, 1872? ii) What will be the consequences in case the ground-nut bag were mixed without the consent of Mr Truth under the above-said Act? (May 2022)

Ans. As per the provisions of the Indian Contract Act, 1872, if the bailee mixes the goods bailed with his own goods, with the consent of the bailor, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture. Further, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. Facts of the case: Mr Truth deposited 100 bags of groundnut in his factory of Mr False for safekeeping. Mr False mixed the ground-nut bags with the other ground-nut bags in the factory with the consent of Mr Truth and consumed them to produce edible oil. Conclusion: i) Yes. Mr Truth is entitled to claim his share in the edible oil produced as the mixing of groundnut bags was done with the consent of Mr Truth (bailor). ii) In the present case, if it is possible to separate the groundnut bags of Mr Truth from the groundnut bags of Mr False, then Mr False will bear the expenses of such separation. But, if it is not possible to separate the bags, then Mr False shall compensate Mr truth for the loss of his goods

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31.

A

hires a carriage from B and agrees to pay ₹500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B. (ICAI SM)

Ans. As per the provisions of the Indian Contract Act, 1872, if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Facts of the case: A hires a carriage from B and agrees to pay ₹500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Conclusion: In the given case, B is responsible for compensating A for the injuries sustained even if he was not aware of the defect in the carriage.

32.

A

bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in a safe locker at his residence, where he usually keeps his own jewellery. After a month, all jewellery was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed. (ICAI SM)

Ans. As per the provisions of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed if he has taken reasonable care. Facts of the case: A bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in a safe locker at his residence, where he usually keeps his own jewellery. After a month, all jewellery was lost in a religious riot. A filed a suit against B for recovery. Conclusion: In the present case, B is liable to compensate A for his negligence to keep jewellery at his residence. Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence.

33.

Sur

endra guarantees Virendra for the transactions to be done between Virendra & Jitendra during the month of March. Virendra supplied goods of ₹30,000 on 1st March and of ₹20,000 on 3rd March to Jitendra. On 5th March, Surendra died in a road accident. On 10th March, being ignorant of the death of Surendra, Virendra further supplied goods of

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₹40,000. On default in payment by Jitendra on the due date, Virendra sued on legal heirs of Surendra for recovery of ₹90,000. Describe whether legal heirs of Surendra are liable to pay ₹90,000 under the provisions of the Indian Contract Act 1872. What would be your answer if the estate of Surendra is worth ₹45,000 only? (May 2022 RTP)

Ans. As per the provisions of the Indian Contract Act, 1872, in the absence of a contract to the contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, is liable for those transactions which had already taken place during the lifetime of the deceased. Surety's estate would not be liable for the transactions taking place after the death of surety, even if the creditor had no knowledge of surety's death.

Facts of the case: Surendra guarantees Virendra for the transactions to be done between Virendra & Jitendra during the month of March. Virendra supplied goods of ₹30,000 on 1st March and of ₹20,000 on 3rd March to Jitendra. On 5th March, Surendra died in a road accident. On 10th March, being ignorant of the death of Surendra, Virendra further supplied goods of ₹40,000. On default in payment by Jitendra on the due date, Virendra sued on legal heirs of Surendra for recovery of ₹90,000.

Conclusion: On the basis of the above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 5th March, i.e. for ₹50,000. They are not liable for the transaction done on 10th March, even though Virendra had no knowledge of the death of Surendra. Further, if the worth of the estate of the deceased is only ₹45,000, the legal heirs are liable for this amount only.

34.

Mr.

Sanjeev is dealing in high quality timber. Mr. Amit wants to purchase the timber from him on credit which is to be used in renovation of his house. Mr. Pramod gives a guarantee to Mr. Sanjeev for timber to be supplied by Mr. Sanjeev to Mr. Amit. Mr. Sanjeev supplied the required timber to Mr. Amit. Afterwards, Mr. Amit embarrassed and contracts with his creditors (including Mr. Sanjeev) to assign to them his property in consideration of their releasing him from their demands. On due date, Mr. Sanjeev filed the suit against Mr. Pramod for recovery of the payment of timber due to Mr. Amit. Explain, with reference to Indian Contract Act 1872, whether Mr. Sanjeev can claim the payment from Mr. Pramod? (RTP Nov. 2023)

Ans. Section 134 of the Indian Contract Act 1872 provides that the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In other words, if principal debtor is discharged surety will also be discharged.

On the basis of provisions and facts of the case, it is clear that on assigning his property to creditors, Mr. Amit is released from his liability against his creditors including Mr. Sanjeev. Now, by following the provisions of section 134, as Mr. Amit (principal debtor) is released, Mr. Pramod (surety) will be discharged. Hence, Mr. Sanjeev cannot claim the payment from Mr. Pramod

35.

Ma

nish advances to Naman ₹1,00,000 on the guarantee of Piya. The loan carries an interest rate of 10% p.a. Subsequently, Naman becomes financially unstable. On Naman's request, Manish reduces the interest to 6% p.a. and does not sue Naman for one year after the loan becomes due. Naman becomes insolvent. Can Manish sue Piya? (Jan 2021, Nov 2018, May 2019 RTP, Nov 2019)

Ans. As per the provisions of the Indian Contract Act, 1872, if the creditor makes any variance without the consent of the surety, then surety is discharged to the transactions subsequent to the change. Further, if there is any contract between the principal debtor and the creditor, with which the creditor makes a composition with or promises to give time to or not to sue, the principal debtor discharges the surety until the surety gives his consent to such contract. Facts of the case: Manish advances to Naman ₹1,00,000 on the guarantee of Piya. The loan carries an interest rate of 10% p.a. Subsequently, Naman becomes financially unstable. On Naman's request, Manish reduces the interest to 6% p.a. and does not sue Naman for one year after the loan becomes due. Naman becomes insolvent. Conclusion: In the present case, Manish cannot sue Piya as there is variation in terms of the contract and compounding between Manish and Naman without Piya's consent.

36.

R

gives his umbrella to M during the rainy season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips, and the umbrella is badly damaged. Who bears the loss and why?

As per the provisions of the Indian Contract Act, 1872, where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part. Facts of the case: R gives his umbrella to M during the rainy season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips, and the umbrella is badly damaged. Conclusion: In the present case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.

37.

Mr

s Shweta delivered her silver jewellery to Mr Amit, a goldsmith, for the purpose of making a new silver plate out of it. Every evening she used to receive the unfinished good (silver plate) to put it into a box kept at Mr Amit's shop. She kept the key of that box with herself. One night, the silver plate was stolen from that box. Whether the possession of the goods delivered constitute the contract of bailment? (ICAI SM)

Ans. As per the provisions of the Indian Contract Act, 1872, bailment means the delivery of goods from one person to another for some purpose, upon a contract that they shall be returned or disposed of according to the direction of the person delivering them after the accomplishment of such purpose. As per the provisions of the Indian Contract Act, 1872, the delivery to the bailee maybe done by doing anything which shall put the goods in possession of the bailee or any person authorised to hold them on his behalf. Thus, the delivery is necessary to constitute the bailment. Facts of the case: Mrs Shweta delivered her silver jewellery to Mr Amit, a goldsmith, for the purpose of making a new silver plate out of it. Every evening she used to receive the unfinished good (silver plate) to put it into a box kept at Mr Amit's shop. She kept the key of that box with herself. One night, the silver plate was stolen from that box.

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## SALE OF GOODS ACT 1930

38.

Ra

dhika agrees to buy a new air conditioner from a shop keeper for ₹80,000 payable partly in cash of ₹60,000 and partly in exchange for an old AC. Is it a valid contract of sale of goods? Give reasons for your answer. (ICAI SM)

Ans. As per the provision of the Sale of Goods Act, 1930, goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as a barter. However, a contract of sale of goods for a fixed price payable partly in goods and partly in cash is held to be a valid contract of sale.

Facts of the case: Radhika agrees to buy a new air conditioner from a shop keeper for ₹80,000 payable partly in cash of ₹60,000 and partly in exchange for an old AC.

Conclusion: In the present case, the new AC is agreed to be sold for ₹80,000 and the price is payable partly in exchange for the old AC and partly in cash of ₹60,000. So, in this case, it is a valid contract of sale.

39.

Cer

tain 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. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B and B sued A. Advice B and C the Sale of Goods Act, 1930?

As per the provision of the Sale of Goods Act, 1930, where a contract of sale is not severable, and the buyer has accepted the goods (wholly or partly), the breach of any condition can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated. Facts of the case: Certain goods were sold by sample by A to B, who 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. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B, and B sued A. Conclusion: In the present case, D could reject the goods and treat it as a breach of implied condition as to sample. The buyer should be given a 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 accordingly.

40. A, a  
businessman of England, bought 3,000 tins of condensed milk from B, a dealer in U.S.A. When the tins reached in England, it was found that 1,000 tins contained the label of „Nissly Brand“. C, another manufacturer of milk under the name of „Nestle Brand“, claimed that this was an infringement of his trademark. A had to remove the labels, in order to get clearance from custom authorities. Moreover, A had to sell the tins at loss. A brought an action against B for the breach of condition. Can he do so?

Ans.

Ans. In every contract of sale **there is an implied condition that the seller has a valid title to the goods, that is, he is entitled to sell the goods.**

This implied condition, as stated in section 12 above, may be analysed as follows:

**(a) In the case of sale, the implied condition is that the seller has the right to sell the goods, and**

**(b) In case of an agreement to sell, the implied condition is that the seller will have the right to sell the goods at the time when the ownership is to pass from the seller to the buyer.**

Fact: A, a businessman of England, bought 3,000 tins of condensed milk from B, a dealer in U.S.A. When the tins reached in England, it was found that 1,000 tins contained the label of „Nissly Brand“. C, another manufacturer of milk under the name of „Nestle Brand“, claimed that this was an infringement of his trademark. A had to remove the labels, in order to get clearance from custom authorities.

Conclusion: In the present case there is breach of condition as to title. Buyer can avoid contract or claim damages or both.

41. Ka  
rthik sold to Akshay, 3000 tins of Australian fruits which were agreed to be packed in cases each containing 30 tins. Karthik delivered the substantial portion of the fruits in cases containing 24 tins.

Hint: It was held that the method of packing was a part of the description. Therefore, Akshay was entitled to reject all the goods. Thus, once it is proved that the sale is by description, then the goods must be correspond with the description. If they do not correspond, the buyer may reject them and the seller cannot take the defence by saying that they will serve the buyer"s purpose.

42. Ab  
hay purchased from Sanjay, a sewing machine which he had never seen. Sanjay described the machine as „Brand New“. But on delivery, Abhay found that the machine was extremely old. Can Abhay Return the machine?

Ans. Hint : condition as to description

43. „B“  
selects certain furniture in a shop. The price is settled. He arranges to take delivery of the furniture the next day through his servant and agrees to pay for the furniture on the first of the next month. The furniture was destroyed by fire the same evening. Is „B“ liable to pay the price? Give reasons.

Ans. Hint: Yes, „B“ is liable to pay the price, the contract being an unconditional contract for the sale of specific goods in a deliverable state. The property i.e. the ownership in such case passes immediately on conclusion of the contract. The postponement of payment of price or time for delivery of goods does not withhold the passing of property in the goods. (Sec.20)

44. Mr.  
Gill visited a café with a friend who ordered a bottle of ginger-beer for him. Mr. Gill drank part of its contents and when the remainder was of a dark glass, a snail in a state of decomposition floated out of the bottle. Mr. Gill suffered from shock and gastro-entreaties. Decide whether Mr. Gill can claim the damages and from whom?

Ans. Mr Gill can claim damages for breach of condition as to wholesomeness

45. A  
delivered a horse to B on a sale and return basis. The agreement provided that B should try the horse for 8 days and return if he did not like the horse. On the third day, the horse died without the fault of B. A files a suit against B for the recovery of price. Can he recover the price? (ICAI SM, Nov 2022 RTP)

Ans. As per the provision 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: i) When the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction ii) If he does not signify

his approval or acceptance to the seller but retains the goods without giving notice to 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 iii) He does something for the good, which is equivalent to accepting the goods, e.g., he pledges or sells the goods. Also, if 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 becomes void.

Facts of the case: A delivered the horse to B on a sale or return basis. It was decided between them that B will try the horse for eight days, and in case he does not like it, he will return the horse to owner A. But on the third day, the horse died without any fault of B. the time given by seller A to buyer B has not expired yet. www.escholars.in 86

Conclusion: In the present case, the ownership of the horse still belongs to seller A. B will be considered as the owner of the horse only when B does not return the horse to A within the stipulated time of 8 days. The suit filed by A for the recovery of price from B is invalid, and he cannot recover the price from B.

46.

A

contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930? (Nov 2022 RTP)

Ans. As per the provisions of the Sale of Goods Act, 1930, if the seller delivers to the buyer the goods mixed with goods of a different description (not included in the contract), the buyer may: ✓ accept the goods which are as per the contract & reject the goods not as per the contract, or ✓ may reject the whole goods. www.escholars.in 89

Facts of the case: A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type.

Conclusion: In the present case, A has the right to accept only 25 chairs as per the contract and reject the rest 25 chairs not as per the contract or A may reject the whole 50 chairs.

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47.

A

agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?

Ans. As per the provision of the Sale of Goods Act. 1930, provides that the unpaid seller who is in possession of the goods is entitled to exercise the right of lien in the following cases:

- 1) Where the goods have been sold without any stipulation as to credit
- 2) Where the goods have been sold on credit but the term of credit has expired
- 3) Where the buyer has become insolvent even though the period of credit has not yet expired.

Facts of the case: A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods.

Conclusion: In the present case, the goods are still physically in possession of A, the seller. In the meantime, B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of the price by the buyer.

48.

A,

who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?

Ans. As per the provision of the Sale of Goods Act, 1930, the right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. After that, the seller regains possession of the goods. This can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier to take the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent.

The conditions necessary for exercising this right are:

- 1) The buyer has not paid a total price to the seller.
- 2) The seller has delivered the goods to a carrier, thereby losing his right of lien.
- 3) The buyer has become insolvent.
- 4) The goods have not reached the buyer; they are in the course of transit.

Facts of the case: A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent.

Conclusion: In the present case, the railway authorities cannot stop goods because the goods are not in transit. A, who has loaded the goods on his truck, is the agent of the buyer. That means railway authorities have given possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes possession of the goods.

49.

Mr

s G bought a tweed coat from P. When she used the coat, she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller, i.e., P. Mrs G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?

Ans. As per the provision of the Sale of Goods Act, 1930, in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods. But if the buyer: ✓ expressly or impliedly makes known to the seller the particular purpose for which the goods are required, ✓ relies on the seller's skill and judgement, ✓ and the seller sell goods of that description which the buyer wants, then the buyer can make the seller responsible.

Facts of the case: Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her shin as her skin was abnormally sensitive. But she did not make this fact known to the seller, i.e., P. Mrs G filled a case against the seller to recover damages.

Conclusion: In the present case, Mrs G purchased the tweed coat without informing P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs G cannot treat it as a breach of

implied condition as to fitness and quality and has no right to recover damages from the seller

50. Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies 'Sir, my all sweets are fresh and of good quality.' Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, asks the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

- (a) State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?
- (b) Will your answer be different if Prakash does not taste the sweets?

Ans. By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

- (a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.
- (b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prakash can return the sweets and avoid the contract.

51. Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ ₹ 100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale.

Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930?

Ans. According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but

if he accepts the goods so delivered, he shall pay for them at the contract rate. In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month.

Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes. Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

52. X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

Ans. Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].

Here, X (the furniture dealer) entered into an agreement of sale with Y, where Y was to pay for the furniture in three instalments, and the furniture would become Y's property upon payment of the last instalment. The above scenarios is very much covered in the provisions of Section 30(2).

In this case, Z has acted in good faith and bought the furniture from Y who was in possession of the furniture; did not pay the last installment to X. X cannot file a suit against Z. He can only take proceedings against Y.

53. Sta  
te giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932:

(i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it a case of partnership?

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is Y liable to a paper-dealer for paper supplied to X to print Y's book?

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

ANS. As per 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.

a. Yes, it is a case of partnership.

Reason: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

b. No, it is not a case of partnership

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

c. No, it is not a case of partnership

Reason: Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because, neither there is existence of business, nor mutual agency is there.

54. P, Q and R are partners in a partnership agree. R retires from the firm without giving public notice. P approached S, an electronic appliances 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. (June 2023)

Ans. Provision: As per the provision of the Indian Partnership Act, 1932, partnership by holding out or estoppel means when a man holds himself out as a partner or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct, have induced others to believe that he is a partner, or he may have allowed others to represent him as a partner. The result in both cases is identical. A retiring partner continues to be liable to third party for the acts of the firm until public notice is given for his retirement, either by himself or by firm.

Facts of the case: P, Q, R, S were partners in a firm R retired from the partnership but failed to give public notice of his retirement. After his retirement, P approached S, an electronic appliances trader for purchase of fans for firm. P introduced E, an employee

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of the firm as partner of the firm. S believing E and R as partners, supplied fans but did not receive payment after expiry of credit period.

Conclusion: In the present case R, a retiring partner, fails to give public notice, so he will be liable to Mr S. Also E will be treated as partner by estoppel and thus would remain liable to S for fans supplied. So Mr. S can claim amount from P, Q, R, S and E

55.

X

was minor introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due. Explain:

- 1) To what extent X will be liable?
- 2) Can L recover his debt from X?

**(Hint: 1)** X failed to give the public notice after attaining the majority, hence becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership. **2)** Yes. Can be recovered from X.)

56.

3.

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, 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 the united approval of the rest of the partners. **i)** Examine whether action by the partners was justified or not? **ii)** What should have the factors to be kept in mind prior to expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

As per the provision of the Indian Partnership Act, 1932, 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 includes three things: 1) The expulsion must be in the interest of the partnership. 2) The partner to be expelled is served with a notice. 3) He is given an opportunity of being heard. If a partner is otherwise expelled, the expulsion is null and void. Fact of the case: M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, 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 the united approval of the rest of the partners. Conclusion: **i)** Action by the partners of M/s XYZ & Associates, a partnership firm,

to expel Mr G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr G. A proper notice and opportunity of being heard has to be given to Mr G. ii) The following are the factors to be kept in mind prior to expelling a partner from the firm by other partners: a) the power of expulsion must have existed in a contract between the partners; b) the power has been exercised by a majority of the partners; and c) it has been exercised in good faith

57.

4.

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?

Ans. 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. 1) There must be an agreement between all the persons concerned; 2) The agreement must be to carry on some business; 3) The agreement must be to share the profits of a business and 4) The business was carried on by all or any of them acting for all. 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 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.

58.

5.

A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he



E will be treated as partner by estoppel and thus would remain liable to S for fans supplied. So Mr. S can claim amount from P, Q, R, S and E.

60.

7.

Shyam, Mohan and Keshav were partners in M/s Nandlal Gokul wale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932.

Ans. According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. 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. Further, according to Section 21, a partner has authority, in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm. On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss. Hence, this sale will bind the firm.

61.

8.

Ms Lucy, while drafting the partnership deed to take care of few important points. What are those points? She wants to know the list of information which must be part of the partnership deed drafted by her. Also, give a list of information to be included in the partnership deed? (ICAI SM, MTP Dec 2022)

Ans. As per the provision of the Indian Partnership Act, 1932, a document which contains various terms and conditions related to the relationship of partners to each other is called a partnership deed. The information contained in a partnership deed is as follows: 1) Name of the partnership firm. 2) Name of all the partners. 3) Nature and place of the business of the

firm. 4) Date of commencement of partnership. 5) Duration of the partnership firm. 6) Capital contribution of each partner. 7) The profit-sharing ratio of the partners. 8) Admission and retirement of a partner. 9) Rates of Interest on Capital, Drawings and Loans. 10) Provisions for settlement of accounts in the case of dissolution of the firm. 11) Provisions for salaries or commissions payable to the partners, If any. 12) Provisions for the expulsion of a partner in case of breach of duty or fraud Ms Lucy, while drafting the partnership deed to take care of few important points: i) The partnership agreement must be in writing. An oral partnership agreement is not a partnership deed. ii) The partnership deed contains various terms & conditions as to the relationship of the partners to each other. iii) The partnership comprises of immovable property, then the partnership deed must be in writing, stamped & registered under Registration Act iv) If the partnership comprises of no immovable property, then the partnership deed must be in writing and stamped according to the provisions of the Stamp Act, 1899.

62.

9.

A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932?

Ans. According to Section 13(e) of Indian Partnership Act, 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances. In the instant case, M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss.

On the basis of above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

63.

A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on

behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

- i. Whether the Firm's contention shall be tenable? \
- ii. What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware?

64. Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send 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 provision of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent?

Ans. As per the provision of the sale of Goods Act, 1930, 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. Also, where there is a contract for the sale of unascertained or future goods by description and such goods, already in a deliverable state are unconditionally appropriated to the contract, either by the seller or buyer, the property in the goods passes to the buyer after appropriation. Facts of the case: Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send 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. Conclusion: In the present case, following conclusions can be considered: 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 the case of 60 bales would be borne by Mr S. as regards 40 bales; the loss would be borne by Mr V since the goods have not been identified and appropriated. 2) If the bales were not selected with the consent of the buyer, then the property in the goods has not been transferred at all, and hence the loss of 100 bales would be borne by Mr V completely

65. X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership

10.

firm. Z filed a suit against X and A for the recovery of price. Advise Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.

Ans In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932). • Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'. You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention. The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

66. 11.  
A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Ans. Retirement / Death of Partner: Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

- (i) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- (ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Conclusion: Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A shall be entitled, at his option to: (i) the 20% shares of profits (as per the partnership deed); or (ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

67. 12.  
P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?

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Ans. Provision :

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.

Conclusion: Suit is maintainable as the registered firm satisfied the condition that " suit must be initiated by registered partners on behalf of firm.

68.

13.

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. • Explain with reasons: (i) Whether Ram's private estate is liable for the price of the machine purchased by the firm? (ii) Against whom can the creditor obtain a decree for the recovery of the price?

Ans. 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:

- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased.
- (ii) 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.

69.

14.

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on

31<sup>st</sup> July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

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

Ans. As per the provision of the Indian Partnership Act, 1932, an outgoing partner may carry the business that is competing with that of the firm, but he may not:

- a) use the firm's name;
- b) represent himself as carrying on the business of the firm; or
- c) solicit the customers who were dealing with the firm before such outgoing partner was ceased to be a partner.

However, the partner may agree with the outgoing partner that he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraints are reasonable.

As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -

- Interest at 6% p.a, on amount of his share in the property, or
- Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher.

This provision is subject to the contract to the contrary.

**Facts of the case:**

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31<sup>st</sup> July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.

**Conclusion:**

- 1) P & Q can start a competitive business in the name of M/S PQ & Co. after following the above conditions in the absence of any agreement.
- 2) In the present case, P & Q shall be entitled at their option to:
  - profits of the firm made from the date on which P & Q left the firm; or

- interest at the rate of 6% p.a. on the amount of P & Q's share in the property.

R and S cannot continue the business without settling the accounts with p and Q

70.

PK

Infrastructure limited has a paid-up share capital divided into 1000000 equity shares of ₹100 each. 4,00,000 equity shares of the company are held by the Central government, and 2,20,000 equity shares are held by the Government of Haryana. Explain with reference to relevant provisions of the Companies Act, 2013 whether PK Infrastructure Limited can be treated as a Government Company.

Ans. As per the provisions of the Companies Act, 2013, any company in which not less than 51% of the paid-up share capital is held by: } Central Government, or } State Government, or } partly by the Central Government and partly by one or more State Governments. This provision also includes a company which is a subsidiary company of a government company. Facts of the case: PK Infrastructure limited has a paid-up share capital divided into 1000000 equity shares of ₹100 each. 4,00,000 equity shares of the company are held by the Central government, and 2,20,000 equity shares are held by the Government of Haryana. Explain with reference to relevant provisions of the Companies Act, 2013 whether PK Infrastructure Limited can be treated as a Government Company. Conclusion: In the present case, 4,00,000 equity shares of the company are held by the Central Government, and 2,20,000 equity shares are held by the Government of Haryana out of the 10,00,000 equity shares, which is 62%. So, it is more than 51% of paid-up share capital. Hence, PK Infrastructure Limited will be treated as a Government Company.

71.

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

- (a) Ans. 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.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

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 31<sup>st</sup> March, 2019 is immaterial.

72.

MT

*K Private Limited is a company registered under the Companies Act, 2013 on 5<sup>th</sup> January, 2021. The company has not started its business till now. On 7<sup>th</sup> April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.*

Ans. **“Inactive company”** means a company which has not been carrying on any business or operation, or has not made any **significant accounting transaction** during the last two financial years, or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]

“Significant accounting transaction” means any transaction other than—

- (a) payment of fees by a company to the Registrar;
- (b) payments made by it to fulfil the requirements of this Act or any other law;
- (c) allotment of shares to fulfil the requirements of this Act; and
- (d) payments for maintenance of its office and records.

In the instant case, MTK Private Limited was registered on 5<sup>th</sup> January, 2021 and has not started its business till now. On 7<sup>th</sup> April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.

73.

Th

The Articles of Association of BC Ltd. empowered the directors to borrow money within the limit of `50 lakh. The Articles further provided that the directors can also exceed the borrowing limit of `50 lakh with the consent of the Company in general meeting. The directors of BC Ltd. took the loan of `75 lakh from R being one of the directors of BC Ltd. without obtaining the consent of the Company in general meeting. The Company, BC Ltd. refused to repay the loan amount to R. In the light of decided case law, state whether R will be able to get his money back from the Company?

**Provision:**

The present case relates to the exceptions to the Doctrine of Indoor Management. The relief on the ground of 'Indoor Management' cannot be claimed by an outsider dealing with the company where the outsider had knowledge of irregularity.

The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company.

Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management.

**Fact of the case:**

The Articles of Association of BC Ltd. empowered the directors to borrow money within the limit of `50 lakh. The Articles further provided that the directors can also exceed the borrowing limit of ` 50 lakh with the consent of the Company in general meeting. The directors of BC Ltd. took the loan of `75 lakh from R being one of the directors of BC Ltd. without obtaining the consent of the Company in general meeting. The Company, BC Ltd. refused to repay the loan amount to R

**Conclusion:**

1. Considering the above, R will be able to get only Rs. 50 lakh from BC Ltd. He will not be able to get the remaining amount of Rs. 25 lakh as he being the director of BC Ltd. is deemed to have knowledge of the authority of Board of Directors of the Company to borrow money as per the provisions of Articles of Association of the Company.

74.

Ra

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

Ans. As per the Doctrine of Ultra Vires, any 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. [Case Law related to Doctrine of Ultra Vires – Ashbury Railway Company Ltd. Vs. Riche] Facts of the case: Ravi Private Limited borrowed ₹5 crores from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. Conclusion: In the present case, since the contract between Ravi Private Limited and Mudra Finance Ltd. is void due to its being ultra vires, Ravi Private Ltd. is not liable to pay such debt. Remedy available to the Mudra Finance Ltd.: Mudra Finance Ltd. cannot enforce such contract against Ravi Private Limited and hence cannot recover the loan amount from the company. But, since the repayment of such loan will become the personal liability of the directors of Ravi Private Limited, Mudra Finance Ltd. can take action against the directors and may file a suit for injunction.

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75.

Th

e K Ltd. was in the process of incorporation. The Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result, supplier sued the promoters of the company for the recovery of money. Examine whether promoters can be held liable for the payment under the following situations: a) When the company has already adopted the contract after incorporation? b) When the company makes a fresh contract with the suppliers in substitution of pre incorporation contract

Ans. The promoters remain personally liable on a contract made on behalf of a Company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the Company's name, even though the contract expressly provided that only the Company shall be answerable for performance. Further, a Company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. The Company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. a. The promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the Company. Therefore, promoters continue to be held liable in this case for the reasons given above. b. In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms at that of pre-incorporation contract.

76.

Th

e paid-up share capital of XYZ Pvt. Ltd. is ₹ 20 lakhs consisting of 2,00,000 Equity shares of ₹ 10 each fully paid-up. ABC Pvt. Ltd. and its subsidiary DEF Pvt. Ltd. are holding 60,000 and 50,000 shares respectively in XYZ Pvt. Ltd. Examine with reference to the provisions of the Companies Act, 2013 whether XYZ Pvt. Ltd. is a subsidiary of ABC Pvt.Ltd.? Would your answer be different if only DEF Pvt. Ltd. is holding 1,10,000 shares in XYZ Pvt. Ltd.?

Ans. Provision: Subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— i) controls the composition of the Board of Directors; or ii) exercises or controls more than one-

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half of the total voting power either at its own or together with one or more of its subsidiary companies:

Fact of the case: The paid-up share capital of XYZ Pvt. Ltd. is ₹ 20 lakhs consisting of 2,00,000 Equity shares of ₹ 10 each fully paid-up. ABC Pvt. Ltd. and its subsidiary DEF Pvt. Ltd. are holding 60,000 and 50,000 shares respectively in XYZ Pvt. Ltd.

Conclusion: In the present case, There are 2,00,000 Equity shares of ₹ 10 each fully paid up in XYZ Pvt.Ltd. And ABC Pvt.Ltd& its Subsidiary DEF Pvt. Ltd Holds 60,000 & 50,000 shares respectively in the XYZ Pvt. Ltd. i.e. Indirectly ABC Pvt. Ltd hold in total 1,10,000 shares (60,000 + 50,000) i.e. more than 50% in the XYZ Pvt. Ltd. Thus, XYZ Pvt. Ltd is subsidiary of ABC Pvt. Ltd. If only DEF is holding 1,10,000 shares in the XYZ Pvt. Ltd. Company then also XYZ Pvt. Ltd is subsidiary of ABC Pvt. Ltd. Because ABC Pvt. Ltd is Holding Company of XYZ Pvt. Ltd Company

77. Some of the creditors of Pharmaceutical Appliances Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.

Ans. As per the Doctrine of Corporate Veil, a company is identified separately from the members of the company. However, the corporate veil can be lifted, which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard to the realities behind the legal facade. Where the Courts ignore the company's identity and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.

Lifting of Corporate Veil: The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

1) Trading with enemy: If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell in order to determine the true character of the company, i.e., whether it is a friend or co-enemy. [Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.]

2) Where a corporate entity is used to evade or circumvent tax, the corporate veil may be lifted by the court in order to find out the true purpose of incorporating such a company. [DinshawManeckjee Petit]

3) Where companies form other companies as their subsidiaries to act as their agent. Here, the court will lift the corporate veil of the subsidiaries in order to find out the true beneficiary. [Merchandise Transport Limited vs. British Transport Commission]

4) A company formed to circumvent the welfare of employees. [Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd.]

5) Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent the law, to defraud creditors or to avoid legal obligations. [Gilford Motor Co. vs Horne]

78. 65. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of ₹ 4.5 crores and turnover of ₹ 25 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013: (i) Whether the MNP Private Ltd. can avail the status of small company? (ii) What will be your answer if the turnover of the company is ₹ 3.75 crore?

Ans. Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

1) 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 ten crore rupees; and

2) 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 hundred crore rupees.

Nothing in this clause shall apply to—

A) a holding company or a subsidiary company;

B) a company registered under section 8; or

C) a company or body corporate governed by any special Act.

Conclusion: i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 4.5 crore and having turnover of ₹ 25 crore. Since only one criteria of turnover is met, but the another criteria of paid up capital of ₹ 4 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. ii) If the turnover of the company is ₹ 3.75 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

79.

Ro

ckwell Collins Ltd.'s memorandum is mentioned in its object to provide advanced weaponry to the military of India. At the request of the chairman of the company, the company provides advanced weaponry to a private security agency. Later on, the agency refuses to pay, and the company file a suit against the agency. Discuss what remedy will be provided to the company as per the provisions of the Companies Act, 2013?

Ans. As per the provisions of the Companies Act, 2013, the meaning of the term 'ultra vires' is simply "beyond powers". The acts done by the company beyond its object clause of the Memorandum of Association are void. 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.[Leading case law: Ashbury Railway Carriage and Iron Company Limited V. Riche]

Facts of the case: Rockwell Collins Ltd.'s memorandum is mentioned in its object to provide advanced weaponry to the military of India. At the request of the chairman of the company, the company provides advanced weaponry to a private security agency. Later on, the agency refuses to pay, and the company file a suit against the agency.

Conclusion: Here, the company shall not be entitled to any remedy because the transaction done by the company is ultra vires, i.e., it was beyond their powers mentioned in the memorandum.

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80. 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 to 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 nonpayment 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. Analyze the situation and decide whether Mr X is free from his liability

Ans. As per the provision of the Companies Act, 2013, the doctrine of indoor management is an exception to the doctrine of constructive notice. The doctrine of indoor management means that outsiders are not deemed to have knowledge of the internal affairs of the company. If an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. [Case Law related to Doctrine of Indoor Management: The Royal British Bank v. Turquand]

Facts of the case: 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 to 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 nonpayment 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.

Conclusion: In the given case, Mr X has made payment to Mr Z, and Mr Z gave the receipt of the same to Mr X. Thus, it will be rightful on the 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 the payment of goods purchased from M/s ABC Limited, as he has paid the amount due to an employee of the company.

81. The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the purpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs. The members of the company convened

an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advise them.

Ans. Hint : Ultravires. FSH limited will not get any remedy. ABC pvt limited is not liable for the said transaction

82. X Limited was registered as a public company. There are 220 members in the company, as noted below:

- i) Directors and their relatives – 190
  - ii) Employees – 10
  - iii) Ex-employees (shares were allotted when they were employees) – 5
  - iv) 5 couples holding shares jointly in the name of husband and wife (5×2) – 10
  - v) Others – 5
- The Board of Directors of the company propose to convert it into a private company. Also, advise whether a reduction in the number of members is necessary.

Ans. As per the provision of the Companies Act, 2013, a private company can have a maximum of 200 members excluding:

- 1) those who are in the employment of the company and
- 2) those who were members of the company while in the employment and have continued to be members after their employment ceased. Also, two persons holding one or more shares jointly in a company shall be treated as a single member.

Facts of the case: X Limited was registered as a public company. There are 220 members in the company, as noted below:

- i) Directors and their relatives – 190
- ii) Employees – 10
- iii) Ex-employees (shares were allotted when they were employees) – 5
- iv) 5 couples holding shares jointly in the name of husband and wife (5×2) – 10
- v) Others – 5

Conclusion: Here, the Board of Directors of the company can convert it into a private company because there is a maximum of 200 members in the firm. a) Directors and their relatives – 190 b) 5 couples holding shares jointly in the name of husband and wife (5×2) – 10 c) Others – 5 Total Members = 190 + 10 + 5 = 205 members

83. Mr. Raj formed a company with a capital of ₹5,00,000. He sold his business to another company for ₹4,00,000. For the payment of sale, he accepted shares worth ₹3,00,000 (30,000 shares of ₹10 each). The balance 1,00,000 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 ₹60,000. The debts due to unsecured creditors were ₹80,000. Mr. Raj retained the entire sum of ₹60,000 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 ₹60,000 should be paid to them. Examine the rights of Mr. Raj and other creditors. Who will succeed?

Ans. Separate Legal Entity: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. 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. Thus, the shareholders are protected from the acts of the company. The leading case law of Saloman Vs Saloman and Co. Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members. 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.

84. Ghanshyam 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 Ghanshyam Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After sometime, on 1st December 2016, each of those 25 members acquired shares in Ghanshyam Oils Limited which they are holding till date. Now company wants to convert itself into a private company.

**State with reasons:**

- (a) Whether Ghanshyam Oils Limited is required to reduce the number of members. Wh
- (b) Would your answer be different if above 25 members were the employee in Ghanshyam Oils Limited for the period from 1<sup>st</sup> April 2006 to 28<sup>th</sup> June 2017? Wo

Ans. 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: i) restricts the right to transfer its shares; 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. Provided further that: i) persons who are in the employment of the company; and ii) 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 iii) prohibits any invitation to the public to subscribe for any securities of the company.

85. Falcon Private Limited is the holding company of Cera Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Cera Private Limited, its turnover was ` 1.80 crore and paid up share capital was ` 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Cera Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

Ans.

**Small Company:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than four crore rupees; and
- (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than forty crore rupees.

Nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

Fact : Falcon Private Limited is the holding company of Cera Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Cera Private Limited, its turnover was ` 1.80 crore and paid up share capital was ` 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Cera Private Limited cannot be categorized as a small company.

Conclusion. Falcon cannot be regarded as Small company as its provisions are not applicable to Subsidiary companies. Company secretary is correct in his contention

86. Mr Harsha donated ₹50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on, he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a “stop payment” instruction to his bankers, and the cheque was not honoured by the bank as per his instruction. The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr Harsha about the course of action available under the Negotiable Instruments Act, 1881. Also mention conditions to be fulfilled for treating the same as offence .

Ans. As per the provisions of the Negotiable Instruments Act, 1881, once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such apers on shall be deemed to have committed an offence. A 'stop payment' instruction is equivalent to the dishonour of the cheque. But, it has also been provided that a cheque given as a gift or donation shall not be covered under this provision

Facts of the case: Mr Harsha donated ₹50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on, he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a "stop payment" instruction to his bankers, and the cheque was not honoured by the bank as per his instruction. The NGO has sent a demand notice and threatened to file a case against Harsha.

Conclusion: In the present case, Mr Harsha has given the cheque to the NGO as a donation. So, if a cheque is given as a donation, and the drawer gave a "stop payment" instruction to the bank, it shall not be deemed to be an offence. So, Mr Harsha's action of giving a "stop payment" instruction is not an offence.

87. Are the following instruments signed by Mr Honest is valid promissory Notes? Give the reason.

a) I promise to pay D's son ₹10000 for the value received (D has two sons).

b) I promise to pay ₹5000 on-demand at my convenience

Ans.

Provision : As per the provisions of the Negotiable Instruments Act, 1881, a promissory note is an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money only to a certain person or the order of the certain person or the bearer of the instrument.

Facts of the case: Mr Honest signed the following promissory notes: a) I promise to pay D's son ₹10,000 for the value received (D has two sons). b) I promise to pay ₹5,000 on-demand at my convenience.

Conclusion: a) In the present case, the promissory note is not valid since it is not clear that Mr Honest will pay ₹10,000, to which son of D as D has two sons. b) In the present case, the promissory note is not valid since Mr Honest put a condition that he will pay ₹5,000 on demand but at his convenience. ii) As per the provisions of the Negotiable Instruments Act, 1881, only the Reserve Bank of India or the Central Government can make or issue a promissory note 'payable to bearer'.

88. Mr S Venkatesh drew a cheque in favour of M, who was sixteen year old. M settled his rental due by endorsing the cheque in favour of Mrs A, the owner of the house in which he stayed. The cheque was dishonoured when Mrs A presented it for the payment on the grounds of the inadequacy of funds. Advise Mrs A how she can proceed to collect her dues?

Ans. As per the provisions of the Negotiable Instruments Act, 1881, every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

However, a minor may draw, endorse, deliver and negotiate so as to bind all parties except himself.

Facts of the case: Mr S Venkatesh drew a cheque in favour of M, who was sixteen year old. M settled his rental due by endorsing the cheque in favour of Mrs A, the owner of the house in which he stayed. The cheque was dishonoured when Mrs A presented it for the payment on the grounds of the inadequacy of funds.

Conclusion: In the present case, M is a minor, may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. Mrs A can, thus, proceed against Mr S Venkatesh to collect her dues.

89. *M drew a cheque amounting to ` 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881*

Ans. According to provisions of negotiable instrument act 1881, The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

Hence in the above case, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him.

90. 'P', a major and 'Q', a minor executed a promissory note in favour of 'R', Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on 'P' and 'Q'.

Ans. LIABILITY OF A MINOR: According to Section 26 of the Negotiable Instruments Act, 1881, every person competent to contract (according to the law to which he is subject to) has capacity to bind himself and be bound by making, drawing, accepting, endorsing delivering and negotiating an instrument. A party having such capacity may himself put his signature or authorize some other person to do so. A minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be a drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto. Therefore, in the instant case, the promissory note is valid and it is binding on 'P' but not on 'Q', a minor

91. A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for ₹500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for ₹2,000. payable to 'C', who has in good faith advanced ₹2,000. Decide, with reasons, whether 'C' is entitled to recover the amount, and if so, up to what extent?

Ans.

Provision: According to Section 20, when a person signs and delivers to another a paper stamped. In accordance with the law relating to the instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby permits prima-facie authority to the holder to complete the instrument of: any amount mentioned therein and not exceeding the amount covered by the stamps. The person who signed the instrument will be liable for it. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid. The principle followed by Section 20 is that a person who gives another possession of his signature on a blank stamped paper allows his agent to fill it up and give to the world the instrument as accepted by him Principle of estoppel is followed.

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Fact of the case: A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for ₹500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for ₹2,000. payable to 'C', who has in good faith advanced ₹2,000.

In the given problem, A is estopped from setting up B is fraud and V is entitled to recover ₹2000/- from A' because C has obtained it as a holder in due course. This liability does no stand of a person other than the holder in due course C as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded put it is necessary that the sum ought not to exceed the amount covered by the stamp.

92. C issues a cheque for ₹55,000 in favour of D. C has a sufficient amount in his account with the Bank. The cheque was not presented within a reasonable time to the Bank for payment, and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether D can recover the money from C?

Ans. As per the provisions of the Negotiable Instruments Act, 1881, the cheque should be presented to Bank within a reasonable time. If a cheque is not presented within a reasonable time, meanwhile, the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within a reasonable time. Further, in determining what a reasonable time is, regard shall be had to (a) the nature of the instrument, (b) the usage of trade and of bankers, and (c) facts of the particular case. The drawer will get a discharge, but the holder of the cheque will be treated as the creditor of the bank in place of the drawer. He "Will be entitled to recover the amount from Bank.

Facts of the case: C issues a cheque for ₹55,000 in favour of D. C has a sufficient amount in his account with the Bank. The cheque was not presented within a reasonable time to the Bank for payment, and the Bank, in the meantime, became bankrupt.

Conclusion: In the above case, the drawer, i.e. C, has suffered the damage as the cheque was not presented by D within a reasonable time. Hence, C will be discharged, but D will be the creditor of the bank for the amount of cheque and can recover the amount from the bank.

93. Chandan is the payee of an order cheque. Prabhat steals the cheque and forges Chandan's signature, and endorses the cheque in his own favour. Prabhat then further endorses the cheque to Mohit, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881.

Ans. As per the provisions of the Negotiable Instruments Act, 1881, the forgery confers no title, and a holder acquires no title to a forged instrument. Thus, where a signature on the negotiable instrument is forged, it becomes a nullity. Since a forged instrument is a nullity, the property in such an instrument remains vested in the person who is the holder at the time when the forged signatures were put on it.

Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under the forged endorsement, even if he is a purchaser for value and in good faith, cannot acquire the rights of a holder in due course.

Facts of the case: Chandan is the payee of an order cheque. Prabhat steals the cheque and forges Chandan's signature, and endorses the cheque in his own favour. Prabhat then further endorses the cheque to Mohit, who takes the cheque in good faith and for valuable consideration.

Conclusion: In the present case, the cheque further endorsed to Mohit by Prabhat is not valid. Therefore, Mohit acquires no good title on the cheque.

94.

Bh

olenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?

Ans. 3. As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under

section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

95. A,  
the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. Is the negotiation valid?

Ans. Provision: Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Fact of the case: A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent

Conclusion : In the present case, Negotiation is valid as it is a case of constructive delivery .

96. A  
bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An action on the bill is brought against B in India.

Ans.

According to provision to Negotiable Instrument Act 1881, In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable

Fact of the case: A bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An action on the bill is brought against B in India.

Conclusion : B is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%.

97.

Sta

te with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881: i) Ram draws a Bill of Exchange in Delhi upon Shyam, a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance. ii) Ramesh draws a Bill of Exchange in Mumbai upon Suresh, a resident of Australia and accepted to be payable in Chennai after 30 Days of sight. iii) Ajay draws a Bill of Exchange in California upon Vijay, a resident of Jodhpur and accepted to be payable in Chennai after 30 days of sight. iv) Mukesh draws a Bill of exchange in Lucknow upon Dinesh, a resident of China and accepted to be payable in China after 45 days of acceptance.

Ans. As per the provisions of the Negotiable Instruments Act, 1881:

✓ A negotiable instrument is an inland instrument if it is drawn or made in India and is payable in India or drawn on a person resident in India.

✓ A negotiable instrument is a foreign instrument that is not an inland instrument.

The following instruments shall be regarded as foreign instruments:

1) Bills are drawn outside India on a person resident in or outside India and made payable in India.

2) Bills are drawn outside India on a person residing outside India and payable in India or outside India.

3) Bills are drawn outside India on a person residing in or outside India and payable outside India.

i) Ram draws a bill of exchange in Delhi upon Shyam, a resident of Jaipur, and accepted it to be payable in Thailand after 90 days of acceptance. This is an inland instrument as the bill of exchange has been drawn in India and drawn on Shyam, who is a resident of India.

ii) Ramesh draws a bill of exchange in Mumbai upon Suresh, a resident of Australia, and accepted it to be payable in Chennai after 30 days of sight. This is an inland instrument as the bill of exchange was drawn in Mumbai, India and was payable in Chennai, India.

- iii) Ajay draws a bill of exchange in California upon Vijay, a resident of Jodhpur, and accepted to be payable in Kanpur after 6 months of acceptance. This is a foreign instrument as the bill of exchange had been drawn in California, not in India.
- iv) Mukesh draws a bill of exchange in Lucknow upon Dinesh, a resident of China and accepted to be payable in China after 45 days of acceptance. This is a foreign instrument as the bill of exchange has been neither payable in India nor it has been drawn on a person resident in India.

98.

Advik

Advik purchased a mobile from Bhanu. He issued a promissory note to Bhanu which was payable on demand but no specific place for payment was mentioned on it. On maturity, Bhanu did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether Advik would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881?

Ans. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. However, where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

In the instant case, Advik issued a promissory note to Bhanu payable on demand without mentioning any specific place for payment. On maturity, the promissory note was not presented by Bhanu for payment.

On the basis of the above provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, Advik would not be discharged from liability even the non-presentment by Bhanu as the promissory note was payable on demand and no specific place for payment was mentioned

99.

Shiva

Shiva gave a gift of ₹ 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act?

Ans.

As per the provisions of the Negotiable Instruments Act, 1881, once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount

of money to another person out of that account for the discharge of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such persons shall be deemed to have committed an offence. A 'stop payment' instruction is equivalent to the dishonour of the cheque. But, it has also been provided that a cheque given as a gift or donation shall not be covered under this provision

Facts of the case: Shiva gave a gift of ` 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

Conclusion: In the present case, Shiva has given the cheque to his sister as a gift. So, if a cheque is given as a donation, and the drawer gave a "stop payment" instruction to the bank, it shall not be deemed to be an offence. So, Mr Harsha's action of giving a "stop payment" instruction is not an offence.

100. Sachin bought 1000 Kg rice from Saurabh for ` 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin?

Ans. According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

Conclusion: On the basis of the above provisions of law and facts of the case, Saurabh has

right to claim price of rice plus fees of advocate plus interest @18% p.a. from the date of payment until tender or realisation thereof.

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