

**CS LLM Arjun Chhabra  
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**Arjun Chhabra Tutorial**

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<b>CA Foundation Business Laws June 24 – Marathon   Writing Practice   Test</b>
<b>Started from 1<sup>st</sup> May 2024</b>
<b>Complete Details: <a href="https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN">https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN</a></b>

<b>Schedule &amp; Details of Marathon – <i>Free Live Stream on YouTube</i></b>			
<b>Date</b>	<b>Time</b>	<b>Lecture</b>	<b>YouTube Link</b>
1 <sup>st</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 1 to 3)	<a href="https://youtube.com/live/3MlfFu91Yjs?feature=share">https://youtube.com/live/3MlfFu91Yjs?feature=share</a>
2 <sup>nd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 4 to 6)	<a href="https://youtube.com/live/rRrjcxmnZwU?feature=share">https://youtube.com/live/rRrjcxmnZwU?feature=share</a>
3 <sup>rd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 7 to 9)	<a href="https://youtube.com/live/usY6ysQNHK8?feature=share">https://youtube.com/live/usY6ysQNHK8?feature=share</a>
4 <sup>th</sup> May 2024	04: 00 PM	The Sale of Goods Act, 1930	<a href="https://youtube.com/live/zuRe8kwuRFs?feature=share">https://youtube.com/live/zuRe8kwuRFs?feature=share</a>
5 <sup>th</sup> May 2024	04: 00 PM	The Indian Partnership Act, 1932	<a href="https://youtube.com/live/6Kh1pYymTFY?feature=share">https://youtube.com/live/6Kh1pYymTFY?feature=share</a>
6 <sup>th</sup> May 2024	04: 00 PM	The Companies Act, 2013 and LLP Act, 2008	<a href="https://youtube.com/live/qa_U8I7g5fs?feature=share">https://youtube.com/live/qa_U8I7g5fs?feature=share</a>
7 <sup>th</sup> May 2024	04: 00 PM	The Negotiable Instruments Act, 1881 and Indian Regulatory Framework	<a href="https://youtube.com/live/O3Zpm5xy2vc?feature=share">https://youtube.com/live/O3Zpm5xy2vc?feature=share</a>

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How I can get the notes to be used in marathon?

Ans: Please fill this google form to get the notes: <https://forms.gle/kzebBFLaYVZ5ZC8k9>

### Schedule & Details of Writing Practice – Paid Batch

Date	Time	Lecture	Platform
8 <sup>th</sup> May 2024	05: 00 PM	The Indian Contract Act, 1872	ACT Private Application:
9 <sup>th</sup> May 2024	05: 00 PM	The Sale of Goods Act, 1930	
10 <sup>th</sup> May 2024	05: 00 PM	The Indian Partnership Act, 1932	
11 <sup>th</sup> May 2024	05: 00 PM	The Companies Act, 2013	
12 <sup>th</sup> May 2024	05: 00 PM	The Negotiable Instruments Act, 1881	

#### Special Feature of this batch:

1. Student will get writing practice manual with all new questions which is not available in institute repository.
2. 20 hours batch (Approx).
3. Two full tests of 100 marks.
4. Live discussion video of above test.

#### Fees?

Ans:

Rs. 699

Link for enrolment: <https://www.arjunchhabratutorial.com/product/NFQS1685785484>

### Schedule of Test

Test 1	11 <sup>th</sup> June 2024	02:00 PM to 05:00 PM
Test 2	Will announce soon	02:00 PM to 05:00 PM

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## **Arjun Chhabra Tutorial's Gallery**

- 1. FULL VLOG | CA INTER MAY 24 BATCH CONCLUSION DAY | CELEBRATION | DINNER | MOVIE | WITH STUDENTS: [https://youtu.be/47BxbHL\\_qc0?si=Impo7hsjuOcZERBY](https://youtu.be/47BxbHL_qc0?si=Impo7hsjuOcZERBY)**
- 2. FULL VLOG | WET & JOY WATER PARK | ARJUN CHHABRA TUTORIAL | CA INTER MAY 2024: [https://youtu.be/l45jh\\_hHVvY?si=Anyrn3AYFQX-jqvT](https://youtu.be/l45jh_hHVvY?si=Anyrn3AYFQX-jqvT)**

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**FOUNDATION COURSE**

**PAPER 2: BUSINESS LAWS**

Question No. 1 is compulsory.

Answer any **four** questions from the remaining five questions.

Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer.

Working Notes should form part of the answer.

**(Time allowed: 3 Hours)**

**(100Marks)**

**1. (a) (i)**

A young boy absconded from his father's house. The father offered a reward in a pamphlet stating that anybody who traces the missing boy and brings him home will be given Rs. 500. On Mr. Har Bhajan Lal, who knew about the reward, saw the body at Dharmsala Railway Station and took him to the police station. Har Bhajan Lal sent a telegram to the boy's father that he had found his son. Father after getting his son back refusing to give Rs. 500 to Mr. Har Bhajan Lal on the ground that there was no communication of acceptance. Whether Mr. Har Bhajan Lal is entitled to receive the amount of reward following the provisions of Indian Contract Act, 1872? **(4 Marks)**

**Answer:**

General offer can be accepted by anyone by performing the conditions of offer

General offer:

1. It is an offer made to public at large and hence anyone can accept and do the **desired act** (Carlill Vs. Carbolic Smoke Ball Co.).
2. In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.
3. In this case, an offer through pamphlet was an offer to the whole world and could be accepted by anyone who fulfilled the conditions of the offer.
4. Here as Mr Har Bhajan Lal, by tracing the missing boy, had substantially performed the conditions of the offer therefore it was held that he was entitled to receive the amount of reward.

**1. (a) (ii)**

'Dunlop & Co.', a tyre company, sold certain tyres to D, a wholesaler, and secured an agreement from D not to sell the tyres to other trader below the Dunlop's list price. A further condition was also imposed that any retailer to whom D re-supplied the tyres should also promise D not to sell the tyres to the public below Dunlop's list price. D sold the tyres to

'Selfridge & Co' who agreed not to sell the tyres to the public below the Dunlop's list price. But 'Selfridge & Co.' sold the tyres below the Dunlop's list price. 'Dunlop & Co.' sued 'Selfridge & Co'. for damages for breach of the contract. Whether 'Dunlop & Co.' will succeed in filing suit following the provisions of Indian Contract Act, 1872? **(3 Marks)**

**Answer:**

Rule of Privity of Contract

1. The term 'privity of contract' means stranger to a contract. As per the doctrine of privity of contract, a person, who is not a party to the contract, cannot sue for carrying out the promise made by the parties to the contract.
2. In other words, a contract cannot be enforced by a person who is not a party to the contract.
3. In the instant case, agreement of 'Selfridge & Co' for not selling the tyres to the public below the Dunlop's list price is with D and not with 'Dunlop & Co.'
4. Therefore, 'Dunlop & Co.'s action to recover damages from Selfridge & Co. will fail as Dunlop & Co. was a stranger to contract between D and 'Selfridge & Co.'

**1. (b) (i)**

Referring to the provisions of the Companies Act, 2013, state as to when shall a company incorporated outside India be considered as a 'foreign company' within the meaning of the Companies Act, 2013. Also examining the provisions of the Act, state whether in the following cases, the company shall be considered as a 'foreign company':

- I. A company incorporated outside India has a representative in India, who on behalf of the company receives orders from the customers.
- II. Company incorporated outside India holds its Board meetings and general meetings in India. **(4 Marks)**

**Answer:**

Place of business in India

1. As per Section 2(42), foreign company means any company or body corporate incorporated outside India which -
  - (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode and
  - (b) conducts any business activity in India in any other manner.
2. In simple words, foreign company means a company which is incorporated outside India under the law of that other country and has a place of business in India.

3. If a representative of a foreign company in India receives the orders from customers it can be said that it has 'place of business' in India. Hence, such company can be considered as foreign company.
4. Conducting board meeting and general meeting in India by a foreign company cannot be said to have place of business in India. Hence, such company cannot be considered as foreign company.

**1. (b) (ii)**

Q Ltd. is a company registered under the Companies Act, 2013 and 40% of its paid up capital is held by Central government and 11% is held by public institution like Life Insurance Corporation (LIC) and Unit Trust of India (UTI). Can Q Ltd. be treated as government under the provisions of Companies Act, 2013? **(3 Marks)**

**Answer:**

1. Section 2(45) defines a Government company as any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.
2. Thus, in determining whether a company is government company or not the holding by Central and State Government has to be considered and the shares held by public institution has to be ignored. Accordingly, Q Ltd. cannot be treated as government company.

**1. (c)**

Define Partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail. **(6 Marks)**

**Answer:**

Definition — Sec. 4: 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.

The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:

- 1) Association of two or more person
- 2) Agreement between person
- 3) Business
- 4) Sharing of profit
- 5) A business carried on by all or any of them acting for all (Mutual Agency)

**ASSOCIATION OF TWO OR MORE PERSONS:** Partnership is an association of 2 or more persons.

Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner.

Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

AGREEMENT BETWEEN PERSON: Partnership originates from an Agreement/Contract between persons. Agreement may be express (written or oral) or implied.

BUSINESS: Partnership can be formed only for the purpose of carrying on some business. 'Business' includes trade, occupation and profession. Associations created for charitable, religious and social purposes are not Partnerships.

#### SHARING OF PROFIT:

- a) Sharing the profits of business is the essence of Partnership but it cannot be the conclusive evidence as to existence of Partnership.
- b) Sharing of profits implies sharing of losses as well, unless agreed otherwise.
- c) A person may become a Partner only in profits and not for losses by agreement between all Partners.
- d) Ratio in which profits and losses will be shared is based on agreement amongst the Partners.
- e) Though sharing of profits of a business is essential, it does not mean that everyone who participates in the profits of a business is necessarily a Partner, e.g. a Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a Partner.

BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

- (a) A Partner is both an agent and a principal.
- (b) He can, by his acts, bind other Partners and is in turn bound by acts of other Partners.
- (c) It is not essential that all Partners should actively participate in business. Business may be managed by one or more Partners and remaining Partners will be bound by their acts provided such acts relate to carrying on Firm's business and have been done in the Firm's name.

It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

#### **2 (a)**

On 12th January, A agreed to sell his car to B. It was also agreed that A Will accept the cheque for the price of the car. Accordingly, A delivered the car to B and accepted the cheque for its price. Next day, A discovered that the cheque was worthless. Immediately, he informed the police and requested the Automobile Association to trace the car. On 15th



January, B sold the same car to C, who acted in a good faith. Whether c could get a valid title to the car? Advise in the light of the Sale of Goods Act, 1930. **(7 Marks)**

**Answer:**

Sale by person in possession under voidable contract

1. Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods.
2. One of the exceptions is sale by person in possession under a voidable contract (Section 29 of Sale of Goods Act, 1930)
  1. If a person has possession of goods under a voidable contract.
  2. The contract has not been rescinded or avoided so far
  3. The person having possession sells it to a buyer
  4. The buyer acts in good faith
  5. The buyer has no knowledge that the seller has no right to sell.
3. Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.
4. In the instant case, C could not get a valid title to the car as the owner had effectively shown his intention to rescind the contract. In this case, the voidable contract was put to an end, at the time of sale, by informing the police and Automobile Association. And thus C did not get a valid title to the car.

**2 (b)**

Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? **(7 Marks)**

**Answer:**

One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by

giving notice to the company and the company shall intimate the same to the Registrar.

- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen WHETHER RESIDENT IN INDIA (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) OR OTHERWISE
  - shall be eligible to incorporate a OPC;
  - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

**2 (c) (i)**

Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? **(3 Marks)**

**Answer:**

Partners (Section 5 of Limited Liability Partnership Act, 2008): Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

**2 (c) (ii)**

What are the effects of registration of LLP? **(3 Marks)**

**Answer:**

Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

On registration, a LLP shall, by its name, be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

**3 (a) (i)**

A and B were partners in an unregistered firm. A clause in the partnership deed provided that in case of any dispute between the partners, the matter will be referred to arbitration. After some time, a dispute arose between the partners, and A appointed an arbitrator. But B did not give his consent and refused to refer the dispute to the arbitrator. A filed a suit against B that he (B) should be compelled to refer the dispute to the arbitration as there was an arbitration clause in the partnership deed. B contended that the firm was not registered, and, therefore, the suit should be dismissed. Advise whether suit is maintainable as per the provision of the Indian Partnership Act, 1932? **(4 Marks)**

**Answer:**

EFFECTS OR DISABILITIES OF NON-REGISTRATION OF A FIRM

**1. The effects i.e., disabilities of non-registration are as under:**

**The partners cannot file a suit against the firm or other partners [Section 69(1):**

- A partner of an unregistered firm cannot file a suit against the firm or his partners, for the enforcement of any right arising from a contract or conferred by the Indian Partnership Act.
- A partner can file a suit for the enforcement of such right only if the firm is a registered firm and his name appears as a partner in the Register of Firms.
- However, this disability may be removed by getting the firm registered before filing the suit.

**2.** In the instant case A cannot compel B to refer the dispute to the arbitration as there was an arbitration clause in the partnership deed, the suit is not maintainable as the firm is unregistered.

**3 (a) (ii)**

A, a surgeon and druggist, sold his practice to B along with the name and style under which A was carrying on his practice. It was agreed that A to the best of his efforts introduce B to his patients, and to do every reasonable act for promoting B's profession. And B allowed a portion of the profits to A. Whether A and B can be considered as partner as per the provision of the Indian Partnership Act, 1932? **(3 Marks)**

**Answer:**

Sharing of profit is not conclusive evidence of partnership

1. 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.

2. As per explanation II of section 6 The receipt by a person of a share of the profits of a business does not itself make him a partner with the persons carrying on the business and, in particular, the receipt of such share by a previous owner of the business as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.
3. In simple words, Seller of goodwill: Sometimes, a person who sells his business along with its goodwill, is given a share in the profits of the business he has sold. In such cases, that person does not become a partner in the business only on the ground that he receives the profits of the business.
4. As per the explanation given above, in the instant case A and B are not partners in the profession merely because they are sharing profit.

**3 (b) (i)**

Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was Rs. 1.80 crore and paid up share capital was Rs. 80 lakhs. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware 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. **(4 Marks)**

**Answer:**

As per section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:

- (i) paid-up share capital of which does not exceed four crore rupees, and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

**Provided that 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.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of Rs. 1.80 crore, and paid-up share capital was Rs. 80 lakhs. Though Glassware Private Limited, as per the

turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

**3 (b) (ii)**

Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him. **(3 Marks)**

**Answer:**

As per Section 2(92), unlimited company means a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets.

The members of an unlimited company are not liable directly to the creditors of the company. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

Thus, Mahesh cannot directly sue the members of the company for recovery of his dues. He can file a claim to the liquidator of the company.

**3 (c)**

"An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived." Discuss stating also the effect of anticipatory breach on contracts. **(6 Marks)**

**Answer:**

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides as follows: "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."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:

- (1) To either treat the contract as “rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non- performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

**4 (a) (i)**

Manish, a minor, lost his parents in COVID-19 pandemic. Due to poor financial background Manish was facing difficulties in maintaining his livelihood. He approached Mr. Sohel (a grocery shopkeeper) to supply him grocery items and to wait for some period for receiving his dues. Mr. Sohel did not agree with the proposal; but when Mr. Ganesh, a local person, who is a major, agreed to provide guarantee that he would pay the dues in case Manish fails to pay the amount, Mr. Sohel supplied the required groceries to Manish. After few months when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues of Manish. Mr. Ganesh refused to pay the amount on two grounds; firstly, that there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore on both the grounds the contract of guarantee is not valid.

Referring to the relevant provisions of the Indian Contract Act, 1872, decide, whether the contention of Mr. Ganesh, (the surety) is tenable? Will your answer differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors? **(4 Marks)**

**Answer:**

1. As per the provisions of **Section 127** of the Indian Contract Act, 1872, anything done, or promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
2. In the given case, Mr. Ganesh has provided guarantee to Mr. Sohel for the benefit of Mr. Manish which will be treated as sufficient consideration even though there is absence of direct consideration. In other words, a guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.
3. Regarding the contention that Manish is a minor and therefore, the contract of guarantee will be invalid is not tenable due to the fact that Mr. Ganesh (surety) and Mr. Sohel (the creditor) are not minors. In other words, the capability of the principal debtor (being a minor) does not affect the validity of the agreement of the guarantee.

4. In view of the above, it can be concluded that the contention of Mr. Ganesh is not tenable.
5. In case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors:  
The answer will differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors. In such a situation, the agreement will be treated as void from inception as the minors cannot give guarantee even with a claim for necessities.

**4 (a) (ii)**

(a) R instructed S, a transporter, to send a consignment of apples to Chennai. After covering half the distance, Suresh found that the apples will perish before reaching Chennai. He sold the same at half the market price. R sued S. Decide will he succeed as per the provisions of Indian Contract Act, 1872?

(b) Ramesh hires a carriage of Suresh and agrees to pay Rs. 1500 as hire charges. The carriage is unsafe, though Suresh is unaware of it. Ramesh is injured and claims compensation for injuries suffered by him. Suresh refuses to pay. Discuss the liability of Suresh as per the provisions of Indian Contract Act, 1872? **(3 Marks)**

**Answer:**

(a) An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence. In the given case S had acted in an emergency situation and hence, R will not succeed against him.

(b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that 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. Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.

**4 (b)**

What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881? (7 Marks)

**Answer:**

**Inchoate Instrument:** It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

**Ambiguous Instrument:** According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

**4 (c)**

What is the significance of the Supreme Court and High Court in the Indian judiciary? (6 Marks)

**Answer:**

**(i) Supreme Court**

The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

**(ii) High Court**

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High



Court has appellate, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

**5 (a) (i)**

A advertised his car for sale as a "Herald Convertible, white 1961 Model". B examined the car and bought it. Subsequently, B discovered that the car was made of two parts which had been welded together. And only one part was of 1961 Model, whereas the other part was of old model. Advise B whether b could reject the goods as per the provisions of Sale of Goods Act, 1930.? **(4 Marks)**

**Answer:**

Condition as to description [Section 15]

1. Sometimes, the goods are sold by description: In such cases, the implied condition is that the goods shall correspond with the description. The term 'correspondence with description' means that the goods purchased by the buyer must be the same which were described by the seller. If subsequently, it is discovered that the goods do not correspond with the description, the buyer may reject the goods and claim the refund of the price, if already paid.
2. In the instant case the sale was by description and B could reject the car as it did not correspond with the description. In this case, although B has examined the car, but he relied upon the description given by the seller (A).

**5 (a) (ii)**

A sold certain goods to B and delivered them to him. B took the goods to the Railways for the purpose of carrying them to his place of business. However, due to loose packing, the goods were returned to A for repacking. While the goods were with the seller (A) for this purpose, the buyer (B) became insolvent. The seller still being unpaid, claimed to retain the goods in the exercise of his right of lien. Advise whether seller can retain the goods as the provisions of Sale of Goods Act, 1930.? **(3 Marks)**

**Answer:**

Termination of lien or loss of lien

1. The right of lien is lost as soon as the possession of the goods is lost. One of the circumstances where unpaid seller's lien is lost is by delivery of goods to the buyer.
2. The unpaid seller loses his right of lien when he delivers the goods to the buyer or his agent [Section 49(1) (b)].

3. If after obtaining the lawful possession, the goods are delivered back to the seller for some specific purpose, e.g., repair, etc., the seller's lien does not revive, i.e., he cannot exercise his lien again.
4. In this case, the seller had lost his right of lien by delivering the goods to the buyer. And thus, he was not justified in retaining, the goods when the goods were delivered to him for specific purpose (i.e., repacking).

**5 (b)**

State the grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. **(7 Marks)**

**Answer:**

Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932):

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (1) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
- (2) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (3) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (4) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
  - Embezzlement,
  - Keeping erroneous accounts
  - Holding more cash than allowed
  - Refusal to show accounts despite repeated request etc.
- (5) **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (6) **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (7) **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
  - I. Deadlock in the management.

II. Where the partners are not in talking terms between them. III. Loss of substratum. IV. Gambling by a partner on a stock exchange.
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**5 (c)**

Distinction between contract Indemnity and Guarantee. **(6 Marks)**

**Answer:**

<b>Contract of Indemnity</b>	<b>Contract of Guarantee</b>
In this contract there are two parties – the indemnifies and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety
The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.
The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
The contract is between the indemnifier and indemnified.	The contract is between the principal debtor creditor; surety creditor; principal debtor-surety

**6 (a)**

Shankar drew a cheque in favour of Surendar. After having issued the cheque, Shankar 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 Shankar constitute an offence? **(7 Marks)**

**Answer:**

As per the facts stated in the question, Shankar (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and also 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 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 Shankar, i.e., his request to stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

**6 (b)**

State the essential elements of a contract of bailment. **(6 Marks)**

**Answer:**

**Essential elements of a contract of bailment:** Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:

- (i) Delivery of goods-The essence of bailment is delivery of goods by one person to another.
- (ii) Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
- (iii) Return of goods in specific-The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
- (iv) Ownership of goods—in a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.

(v) Property must be movable-Bailment is only for movable goods and never for immovable goods or money.

**6 (c)**

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?  
**(7 Marks)**

**Answer:**

Unpaid Seller

According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) the whole of the price has not been paid or tendered.
- (b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, Rights of an Unpaid Seller against the goods are as follows:

When Property in Goods has passed to the Buyer -	When property in Goods has NOT passed to the Buyer -
<ul style="list-style-type: none"> <li>• Right of Lien on the Goods in his possession,</li> <li>• Right of stoppage of Goods in transit if the Buyer becomes insolvent,</li> <li>• Right of Resale.</li> </ul>	<p>In addition to those 3 remedies, the right of withholding delivery.</p>

These rights can be exercised by the unpaid seller in the following circumstances:

- (i) Right of lien (Section 47): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely: -
  - (a) Where the goods have been sold without any stipulation as to credit;
  - (b) Where the goods have been sold on credit, but the term of credit has expired;
  - (c) Where the buyer becomes insolvent.

Note: The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

According to Section 49 the unpaid seller loses his lien on goods:

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
2. When the buyer or his agent lawfully obtains possession of the goods
3. By waiver thereof.

Note: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

- (ii) Right of stoppage in transit (Section 50): When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this

right by asking the carrier to return the goods back, or not to deliver the goods to the buyer and may retain them until paid or tendered price of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The seller must be unpaid.
  - (b) The seller must have parted with the possession of goods.
  - (c) The goods must be in the course of transit.
  - (d) The buyer must have become insolvent.
  - (e) The right is subject to provisions of the Act.
- (iii) Right to re-sell the goods (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:
- (i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.
  - (ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

- (a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
- (b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.