

## INDIAN CONTRACT ACT, 1872

**Question 1** Explain the type of contracts in the following agreements under the "Indian Contract Act, 1872.

- (i) X promise to sell his scooter to Y for Rs. 1 Lac. However, the consent of X has been procured by Y at a gun point.
- (ii) A bought goods from B in 2015. But no payment was made till 2019.
- (iii) G agrees to give tuitions to H, a pre engineer student, from the next month and H in consideration promises to pay G fees per month [RTP May 2021]

**Answer**

**Hint:**

- (i) **Voidable** right from the beginning. Contracts created by **coercion** are voidable right from the beginning. The contract is voidable at the option of X, the aggrieved party.
- (ii) The contract becomes **void** subsequently & ceases to be enforceable as the debt becomes **time barred** on expiry of 3 years under **law of limitation**. A cannot recover the debt from B.
- (iii) The contract is **executory** in nature, where at the time of formation of contract, performance of parties is due. However, if in the given case H is a minor, then the contract shall be void ab initio.

**Question 2** X offered to sell his house to Y for Rs.50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which reached X before the Email. Is the revocation of acceptance valid?

Would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time? (3 Marks)

**Answer**

**Yes**, the revocation of acceptance is **valid** because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror.

If the letter of acceptance (E-mail) and the Fax of revocation of acceptance reach X at the same time, Revocation is absolute. It doesn't matter it would be revoked.

**Question 3:** Shambhu Dayal started "Self-service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872. (MTP May 2019, MTP July 2021)

**Answer**

**Hint:**

The display of goods in a self-service shop is in the form of an **invitation to offer**; selection of goods & producing them for payment to cashier **amounts to an offer by the customer to purchase the goods**. It is only when the cashier accepts the price being offered and agrees to sell that contract is created. In the given case Shambhu Dayal cannot be compelled to sell the articles to Smt. Prakash since he has rejected her offer to buy the said articles & therefore no contract is created between them.

**Question 4** When is a party said to be in position to influence the will of the other to cause him to enter into a contract [RTP May 2020]

**Answer**

Section 16(2) provides that a person is deemed to be in a position to dominate the will of another where.

1. Where he holds a **real or apparent authority** over the other (For Eg. Master & servant, ITO & Assessee)
2. Where he stands in a **fiduciary relationship** to the other. Fiduciary relationship means a relationship of **mutual trust and confidence**. Such a relationship is supposed to exist in the following cases - father and son; guardian and ward; solicitor and client; doctor and patient; preceptor and disciple; trustee and beneficiary etc.
3. Where a party makes a contract with a person whose **mental capacity is temporarily or permanently affected** by reason of age, illness, or mental or bodily distress.

**QUESTION 5:** P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is the contract valid in the following circumstances under the Indian contract Act, 1872.

- (a) If P says nothing about the unsoundness of the horse to Q.
- (b) If P says nothing about it to Q who is P's daughter who has just come of age.
- (c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing. [MTP July, 2021]

**Answer**

Hint: *Generally, silence is not fraud however in case where silence is equivalent to speech or the person keeping silent is under a duty to speak, then silence shall be treated as fraudulent.*

- (a) Contract is **valid**. A mere silence as to the facts likely to affect the willingness of a person to enter into contract is not fraud generally. Thus, P is not under a duty to speak and disclose the defects to Q.
- (b) The contract is **voidable**. Silence will be treated as fraudulent in this case as P is under a duty to speak to Q who is his daughter & a **fiduciary relation** exists between them.
- (c) The contract is **voidable** silence will be treated as fraud as here silence is equivalent to speech

**QUESTION 6:** Mr. Harish owes payment of 3 bills to Mr. Ashish as on 31st March, 2022

- . (i) Rs 12,120 which was due in May 2018.
- (ii) Rs 5,650 which was due in August 2020
- (iii) Rs 9,680 which was due in May 2021. Mr. Harish made payment on 1st April 2022 as below without any notice of how to appropriate them:

A cheque of Rs. 9,680

A cheque of Rs. 15,000

**Advice under the provisions of the Indian Contract Act, 1872.**

**Answer**

If the performance consists of payment of money and there are several debts to be paid, the **payment shall be appropriated as per provisions of Sections 59, 60 and 61** of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

In the present case, Mr. Harish had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Harish that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of Rs. 9,680 which was due in May 2021.

Cheque of Rs 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Ashish can appropriate the same against the debt of Rs 12,120 which was due in 2018 and balance against Rs 5650 which was due in August 2020

**QUESTION 7** 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 Rs 2,00,000. Mr. Parth ignores the instruction of Mr. Mukund and sells the car to Mr. Naman for Rs 1,50,000. Explain the legal position of contract under Indian Contract Act, 1872 whether:

Mr. Mukund can recover the loss of Rs. 50,000 from Mr. Parth? Mr. Mukund can recover his car from Mr. Naman?

**Answer** 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 Rs. 2,00,000 yet Mr. Parth sold the car to Mr. Naman for Rs. 1,50,000.

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.

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.

Discuss Revocation--

**Question 8.** Manoj gives guarantee for Ranjan, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time-to-time supply goods on credit basis to Ranjan during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000?

**Answer:** Discharge of Surety by Revocation: According to section 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions by notice remains liable for all the past transactions entered into prior to revocation.

In the given case, Manoj the surety, revokes his continuing guarantee given to Sharma, the creditor, for goods supplied to Ranjan (the debtor), when goods worth 40,000 had already been supplied.

As per the above provisions, liability of Manoj, the surety, is discharged with relation to all subsequent credit supplies made by Sharma to Ranjan, after revocation of guarantee. However, Manoj shall be liable for payment of ₹ 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

**Question 9:** Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making a new silver bowl out of it. Every evening, she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shops. She kept the key of the box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

**Answer:** Contract of Bailment: Section 148 of the Indian Contract Act, 1872, defines 'Bailment' as 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 direction of the person delivering them.

As per section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, mere keeping of the box at 'Y's shop, when Mrs. A herself took away the key cannot amount to delivery. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

## LIMITED LIABILITY PARTNERSHIP

**Question 10** Explain the Small Limited Liability Partnership under the LLP Act, 2008.

ANSWER

Small Limited Liability Partnership [Section 2(ta) of the LLP Act, 2008]: It means a limited liability partnership—

- the **contribution** of which, **does not exceed twenty-five lakh rupees** or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- the **turnover** of which, as per the Statement of Accounts and Solvency for the **immediately preceding financial year**, does not exceed **forty lakh rupees** or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

**QUESTION 11** State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. [Jan. 2021, 5 Marks]

Answer.

*Circumstances when liability of partners of LLP is unlimited.*

According to provisions of section 30, of LLP Act, 2008, if **LLP or any of its partners carry out an act, with intent to defraud creditors of the LLP or any other person or for any fraudulent purpose, the liability of the LLP and the partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.** Thus in case of a fraud carried out by a partner, the LLP is also liable to the same extent as the partner unless it is established that such an act was performed by the partner without the knowledge or authority of LLP.

Further where any business is carried out with an intent to defraud others or for any fraudulent purpose, then **every person who was knowingly a party** to such a business shall be punished with:

- ◆ **imprisonment** for a term which may **extend to 5 years** and
- ◆ with **fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**

Moreover, where an LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any' **criminal proceeding which may arise** under any law for the time being in force, the **LLP and any such**

partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. However, LLP shall not be liable, if it can establish that fraudulent act of its partner, designated partner or employee was not within its knowledge

**Question 12** What are the circumstances when LLP can be wound up? [Nov, 2020, 5 Marks]

**Answer**

The winding of LLP can be initiated either voluntarily or by the Tribunal.

A LLP may be wound up by the Tribunal in any of the following instances:

- (i) The LLP decides that it be wound up by Tribunal
- (ii) There are less than 2 partners in the LLP for a period of more than 6 months
- (iii) The LLP is not in a position to repay its debts
- (iv) The LLP has acted against the interests of the sovereignty and integrity of India
- (v) The LLP has defaulted in filing with the Registrar, the Statement of Account & Solvency or the Annual Return for any 5 consecutive financial years or
- (vi) The tribunal is of the opinion that winding-up of LLP is just and equitable.

### **INDIAN PARTNERSHIP ACT, 1930**

**QUESTION 13** What is a Partnership deed? State the contents, contained therein.

(MTP & RTP, Nov. 2018) (MTP, May 2018, MTP Nov. 2020)

**Answer**

Partnership is created out of an agreement which may be oral or written. However, it is advisable to have the **partnership agreement in writing to avoid future disputes**. The document containing the terms and conditions as to the relationship of partners to each other is called a partnership deed. It should be drafted with care and be stamped according to the provisions of the Stamp 1899.

The partnership deed usually contains provisions relating to the following:

- (a) Name of the firm,
- (b) Duration of partnership,
- (c) Nature of business,
- (d) Place where business is to be carried on,
- (e) Capital brought in by each individual partner,

- (f) Property of the firm,
- (g) Proportions of profits and losses of each partner,
- (h) Rights and duties of partners,
- (i) Provisions for accounts, audit, keeping of account books,
- (j) Drawings by partners and specially by a working partner,
- (k) Dissolution of the firm,
- (l) Retirement of a partner,
- (m) Settlement of accounts, division of assets, profits etc., upon dissolution,
- (n) Arbitration clause in case of dispute.

**QUESTION 14** What is the conclusive evidence of Partnership? State the circumstances when partnership is not considered between two or more parties. [May 2018, 4 Marks] [May 2019, 4 Marks, NOV 23 MTP)

**Answer**

According to Sec. 4, there are **4 essential elements** of partnership:

1. That it is the result of **an agreement**, between two or more persons.
2. That it is formed to carry on **a business**.
3. That the persons concerned agree to **share the profits** of the business.
4. That the business is to be **carried on by all or any of them acting for all**.

Further According to **Sec. 6** in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

The relevant factors to be for determining whether there is partnership are the conduct of parties, the mode of doing business, who controls the property, the mode of keeping accounts, correspondence, the manner of distribution of profits, etc. of the four elements, the third element, viz., **sharing of profits is important but not conclusive**. In the following cases there is no partnership even though there is sharing profits:

- (a) A creditor taking a share of profits in lieu of interest and part-payment of principal.
- (b) An employee getting a share of profits as remuneration.
- (c) Share of profits given to workers as bonus.
- (d) Share of profits given to the widow or children of deceased partners as annuity.
- (e) Share of profits given to a previous owner of the business as the consideration for the sale

of the goodwill.

In all the above cases the fourth essential element of partnership viz., **mutual agency, is absent**. A creditor or any employee, or the widow and children of deceased partners **cannot bind** the firm by any act done on behalf of the firm. Only those who have authority to bind the firm by their actions can be called partners. Thus, the **most important test of partnership is agency and authority. This is the cardinal principle of partnership law. If this element of mutual agency is absent, then there will be no partnership.**

### **Question 15**

Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyze the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. [Nov. 2018, 3 Marks], (MTP Nov. 2020).

### **Answer**

According to the provision of the Indian Partnership Act, 1932, when a **person represents himself or knowingly permits himself to be represented as a partner in the firm, when in fact he is not, then he is liable like a partner in the firm** to anyone who on the faith of such representation has given credit to the firm. Thus, when a person by his words or conduct has wrongly induced a third party to believe that he is a partner then he shall be liable as a **partner by holding out**, to such a party, under the law of estoppel. **This rule is also applicable to a former partner who has retired from the firm without giving a proper public notice of his retirement.** In such a case a person who even subsequent to the retirement of the partner, gives credit to the firm on the belief that he was a partner, shall be entitled to hold him liable, under the law of estoppel as a partner by holding out.

Thus, applying the above provisions in the given case, it can be concluded that Mr. P becomes a partner by holding out because he failed to give public notice of his retirement and made representations on behalf of the firm. Thus Mr. X can recover the amount not only from the firm but also from Mr. P under the law of estoppel.

**Question 16** A, and C are partners in a firm called ABC Firm. A, with the 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 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 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? (MTP May 2018 & MTP Nov. 2018)

### Answer

Hint The firm is liable for the acts of a partner within the scope of his implied authority. Further if the partner receives any money or property from a third person in the course of business of the firm & misapplies it or where a firm in the course of business receives money or property and the same is misapplied by a partner while in the custody of the firm, the firm shall be liable to compensate the third party.

Further it is a duty of the partner to indemnify the firm for the loss sustained by it due to his fraud or misconduct:

- (i) Thus firm's contention is not valid and it shall be bound to pay the price irrespective of the fact of not having received the stationery.
- (ii) Where the stationery has been delivered to the firm and then it is used by A for private purpose, then also the firm shall be bound to make payment to D.

In both the above cases the firm can sue A for the loss sustained by it due to A's misconduct.

### SOGA

**QUESTION 17** 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 the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930

Answer

Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

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

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the 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 price by the buyer

### QUESTION 18

Ayushman is the owner of a residential property situated at Indraprastha Marg, New Delhi. He wants to sell this property and for this purpose he appoints Ravi, a mercantile agent with a condition that Ravi will not sell the house at a price not less than ` 5 crores. Ravi sells the house for Rs. 4 crores to Mudit, who buys in good faith. Ravi misappropriated the money received from Mudit. Ayushman files a suit against Mudit to recover his property. Decide with reasons, can Ayushman do so under the Sale of Goods Act, 1930?

Answer

As per the Proviso to **Section 27** of the Sale of Goods Act, 1930, a sale made by a mercantile agent of the goods would pass a good title to the buyer in the following circumstances; namely;

- If he was in possession of the goods or documents with the consent of the owner;
- If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

On the basis of above, it can be said that Ravi, the mercantile agent, sells property to Mudit who bought in good faith. Mudit obtained a good title of that residential property. Hence, Ayushman cannot recover his property from Mudit. Rather, Ayushman can recover his loss from Ravi.

**QUESTION 19** Explain the doctrine of Caveat Emptor. What are the exceptions to the doctrine of 'Caveat Emptor'? (RTP May 2018) (MTP Nov, 2018) [Nov, 2018, 6 Marks] [May 2019, 4 Marks] [Nov. 2020, 4 Marks],

Answer

Caveat Emptor is a Latin expression, which means, "Buyers Beware". The doctrine of caveat emptor means that, ordinarily, a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame the seller or recover damages from him.

- ◆ Thus, it is **buyer's duty to examine goods** thoroughly.
- ◆ The buyer should ensure at the time of purchase that the **goods conform to his requirements**.
- ◆ If the goods turn out to be defective, buyer cannot hold the seller responsible.

**EXCEPTIONS:** The doctrine of caveat emptor does not apply in the following situations:

**1. Fitness as to quality or use. [Sec. 16(1)]**

- I. Where the buyer, expressly or by implication, makes known to the seller the **particular purpose** for which the goods are required,
  - II. so as to show that the **buyer relies on the seller's skill, or judgment**, and
  - III. the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not, *there is an implied condition that the goods shall be reasonably fit for such purpose.*)
- However, this rule does not apply when the goods are sold under a **patent or a brand name**.

**2. Sale of goods by description. [Sec. 16(2)]**

Where there is a sale of goods by description, there is an implied condition that the goods are merchantable that is, fit for particular purpose.

**3. Trade usage. [Sec. 16(3)]**

An implied condition of fitness may be annexed to a contract of sale by usage of trade.

**4. Where the seller is guilty of fraud,**

Where seller makes a false representation and buyer relies on that representation, the doctrine of caveat emptor will not apply, In such case the buyer will be entitled to the goods according to that representation.

**5. Where seller actively conceals a defect**

Where the seller actively conceals a defect in the goods so that the same could not be discovered on a reasonable examination, the doctrine of caveat emptor will not apply. Such a contract will be voidable.

**6. Sale by sample**

When goods are purchased by sample, the bulk must correspond with the sample and the buyer must have reasonable opportunity of inspecting the goods.

**7. Sale by sample as well as description**

The doctrine of Caveat Emptor is not applicable if the goods do not correspond to both, sample as well as description.

**QUESTION 20** Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if She chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra Cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate contract and thus, asked the manager to give her money back. but he denied for the same. Answer the following questions per the Sale of Goods Act,1930.

(i) State with reasons whether Sonal can recover the amount from the Jeweller;

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? [June 2022, 6 Marks]

### Answer

(i) According to the provisions of the Sale of Goods Act,1930, as a general rule it is the responsibility of the buyer to check the suitability for purpose & fitness of the goods being bought by him. However, in the following situation the responsibility as to fitness for buyer's purpose falls upon the seller:

- ◆ where the buyer, expressly or by implications makes known to the seller, the particular purpose for which the goods are required,
- ◆ so as to show that he relies on seller's skill & judgement, and
- ◆ the goods are of a description which is in the course of seller's business to supply (whether he is the manufacturer or not). Thus, on the fulfilment of the above conditions, the implied condition that the goods shall be reasonably fit for such purpose shall apply and seller shall be held liable.

Therefore, by applying the above stated provisions to the given case it is evident that since, Sonal had informed the purpose and requirement in respect of the bangles to the jeweller, who dealt in the said goods in the ordinary course of the responsibility of the seller to ensure that the goods turn out to be suitable for Sonal's use. Since the goods turn out to be unsuitable, there is breach of condition as to quality and fitness and Sonal can repudiate the contract and file a suit for recovery of price as well as damages.

In the given case if the jeweller offers to change the design so as to make it suitable for buyer's (Sonal) use, then also he cannot charge extra cost for the same, since the breach of condition as to quality and fitness entitles the buyer to claim damages. Thus if he offers to rework to

change the design, Sonal has the discretion to accept or reject such offer and treat such a breach of condition as a breach of warranty but the jeweller cannot charge any extra cost for the same.

**QUESTION 21** Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large sand sent his men to take delivery of the goods, They could pack only 60 bales. Later on, there an accidental fire and the entire stock was destroyed including 60 bales that were already packed, Referring to the provisions Of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent? [MTP May 2018 & MTP May 2019]

**Answer.**

**Hint:** According to the provisions of Section 26 of the Sale of Goods Act, 1930, unless contract to the contrary is made, the goods remain at the seller's risk until the property therein is transferred to the buyer. Further the act also states that in case of sale unascertained goods, the property in goods shall pass on to the buyer only when they are ascertained and appropriated unconditionally to the contract either by the buyer with the consent of the seller or by the seller with the consent of the buyer.

In the given case appropriation with respect to 60 bales of cotton has been done. Therefore, property in the said 60 bales of cotton stands passed to Mr. Samuel, the buyer. Thus the loss with respect to the said 60 bales shall be borne by Mr. Samuel.

In respect of the remaining bales, the loss shall be borne by Mr. Varun since the property in respect of the same has not been passed to the buyer Mr. Samuel.

### THE COMPANIES ACT, 2013

**QUESTION 22** State the limitations of the Doctrine of Indoor Management under the Companies Act, 2013. (MAY 2018, 3 MARKS) (RTP Nov. 2020)

**Answer:**

The Doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

***i. Actual or constructive knowledge of irregularity:***

The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

***ii. Suspicion of Irregularity/Negligence:***

The doctrine is not applicable in the case of negligent persons. If an officer of the company acts in a manner, which would not ordinarily be within his powers, the person dealing with him must make proper inquiries and satisfy himself as to the officer's authority. If he fails to make an inquiry, he cannot rely on the rule. Where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary inquiry. The protection of the

"Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.

**iii. Forgery:**

The doctrine of indoor management applies only to irregularities that might otherwise affect a transaction but it cannot apply to forgery which must be regarded as a nullity. Forgery may in circumstances exclude the 'Turquand Rule'.

**QUESTION 23** Five persons are the only members of a private company Flower Fans Limited. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all the 5 die being drowned.

(a) Is the private company Flower Fans Limited no longer in existence?

(b) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? Explain with reference to the provisions of Companies Act, 2013.

**Answer**

(a) **Perpetual Succession** - A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence.

In the instant case, five persons who were the only members of private company and they have died being drowned in the sea. The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members. **(Transmission of Shares)**.

(b) **The statement given is incorrect.** A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.