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1. Mr. R wrote a letter to Mr. Q asking them to tell at what rate they are selling Alfonso mangos, Mr. Q replied that the current rate is Rs.500/dozen, Mr. R replied, please send 10 dozens of mangos and attached a cheque of required amount, Mr. R upon receipt of the cheque replied that the stock of Mangos is over and he is not in position to supply the mangos, can Mr. R file suit against Mr. Q for non fulfilment of order. Is there a binding contact between Q and R?

Ans:- **Provision:** As per section 2(a) of the Indian Contract Act, 1872, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. A statement of price is not an offer. To ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. Thus, the intention to be bound is important factor to be considered in deciding whether a statement is an 'offer' or 'invitation to offer.'

Facts of the case: In the given case, as a reply to the letter written by Mr. R to Mr. Q (seller) asking for a selling price of Alfonso mangoes, Mr. Q replied that the current rate is Rs.500/dozen. So Mr. R gave order for 10 dozen mangoes with a cheque attached to it of required amount, but due to unavailability of stock of mangoes, Mr. Q replied him that he is not in a position to supply the mangoes. Therefore, Mr. R wanted to file suit against Mr. Q.

Conclusion: Here, there is no binding contract between the two, as mere statement of price is not an offer. So, Mr. R cannot file suit against Mr. Q, because he just communicated the price and had never given the offer.

2. Mr. R offered for sale his old house to Mr. Q, there were cracks in the walls of the house but to hide them Mr. R affixed posters of God and Goddesses on the walls, Mr. Q later on came to know about this, Can Mr. Q avoid the contract and if yes on what grounds?

Ans:- **Provision:** According to section 17 of the Indian Contract Act, 1872, 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

When the consent to an agreement is caused by the fraud, the contract is voidable at option of the party defrauded and he can rescind the contract within a reasonable time.

Facts of the case: In the given case, Mr. R, who offered to sale his old house to Mr. Q, affixed the posters of God and Goddesses on the walls to hide the cracks on the walls. So, later on when Mr. Q came to know about this fact and thus want to avoid the contract.

Conclusion: Here, the primary intension of Mr. R was to deceive Mr. Q and thus, actively concealed the fact that walls of the house are having cracks. So, Mr. Q can avoid the contract on the ground of fraud.

3. Mr. Praveen promised to Carry out repairs to Mr. Jayesh's house at a cost of Rs.15,000, the repairs were to be carried out before 15th April 2020 as Mr. Praveen was getting married on that day, all of sudden Mr. Narendra Modi announced nationwide lockdown to stop spread of COVID19, Mr. Praveen could not carry out the repairs due to the lockdown, Mr. Praveen has already received advance of Rs.5,000 from Mr. Jayesh,

Ans:- **Provision:** When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void and parties are discharged from further performance of the contract. Such impossibility is called as the subsequent or supervening impossibility. Further, section 65 states that 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 in order to put the position prior to the contract.

Facts of the case: In the given case, Mr. Praveen, who promised to repair the house of Mr. Jayesh at a cost of Rs. 15,000, failed to complete the contract before 15th April 2020 (i.e. before the date of marriage of Mr. Jayesh) due to nationwide lockdown announced by Mr. Narendra Modi to stop the spread of COVID-19. Mr. Praveen has already received the advance of Rs. 5,000 for the work.

Conclusion: Here, nationwide lockdown is a supervening impossibility which turned the void and parties stands discharged. But as per the context of above provision, Mr. Praveen must return the advance proportionately to Mr. Jayesh and contract is discharged.

4. Mr. X promised to colour Mr. Y's bungalow at an agreed amount of Rs.25,000, the work was to be started from next week itself, but before the work could be started few employees of Mr. X left the job and started their own colouring work, as a result Mr. X failed to colour Mr. Y's bungalow, state whether there is breach of contract on the part of X or the contract has become void

Ans:- **Provision:** According the provisions of the Indian Contract Act, 1872, breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

Facts of the case: In the given case, Mr. X promised to colour Mr. Y's bungalow at an agreed amount of Rs. 25,000, but before starting the work, few employees of Mr. X left the job and started their own colouring work, as a result Mr. X failed to colour the bungalow.

Conclusion: Here, Mr. X is guilty of anticipatory breach of contract and thus liable to pay damages to Mr. Y and also parties are discharged.

5. Mr. X applied for life insurance policy, premium amount was also paid along the application, but even after 5-6 months the insurance company did not communicate their acceptance of the proposal or not, Afterwards Mr. X demanded refund of the policy amount paid to which the insurance company replied stating that your policy has been approved and is running, in this case can X get refund of the premium,

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, to conclude a contract between the parties, the acceptance must be communicated in some perceptible form within reasonable time. Where an offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto. It is one of the essential elements to validate a contract. ***(Bhagwandas v. Girdharilal)***

Facts of the case: In the given case, Mr. X applied for a life insurance policy and also paid the premium amount along with application, but no acceptance has been communicated by the insurance company even after 5-6 months. Thus, Mr. X demanded refund of the premium paid but company replied stating that their policy has been approved and running.

Conclusion: Here, there is no communication of acceptance by insurance company within a reasonable time, which means no valid contract has taken place between them. Thus, Mr. X has the right to claim the refund of premium amount paid.

6. Mr. X sold his agriculture land for Rs.45,000 to Mr. Y with the condition that the price is to be paid within 1 day and the legal formalities for transfer of land would be done on next Monday when the government office would open, Mr. Y paid the amount as agreed, but on the day of registration Mr. X took objection and demanded extra Rs.20,000 for the land since the market rate of the land is Rs.65,000, in fact the

market rate is Rs.65,000 for that land, state if there is any recourse available to Mr. Y and also to Mr. X in these circumstances,

Ans:- **Provision:** As per section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. Also section 25 states that an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate.

Facts of the case: In the given case, Mr. X sold his agricultural land for Rs. 45,000 to Mr. Y where it was agreed to pay the price within a day and legal formalities would be completed on next Monday when government office would open. Mr. Y paid the amount as per the agreement between them, but at the time of completing the legal formalities, Mr. X asked Mr. Y to pay Rs. 20,000 extra as the market price of land at that time was Rs. 65,000.

Conclusion: Here, in the context of above provision, there existed a valid contract between Mr. X and Mr. Y. Consideration paid need not be adequate and consent to the contract was given freely by Mr. X. Thus, Mr. X must transfer the land without demanding the extra amount of Rs. 20,000.

7. Directors of a company appointed Mr. X as company secretary at a monthly salary of Rs.50,000, Mr. X worked for the company for around 6 months and then it was discovered that the right to appoint company secretary is not available to directors but this has to be done by shareholders in their meeting, hence Mr. X was immediately removed from his post, now the question was that can Mr. X be forced to refund the salary he has already received from the company for past 6 months ?

Ans:- **Provision:** According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. The aim of rule of restitution is to put both the parties at par position.

Facts of the case: In the given case, directors of a company appointed Mr. X as company secretary at a monthly salary of Rs. 50,000, though directors were not in power to appoint him. Instead the eights to appoint company secretary is available to shareholders of the company in the meeting. But now it's been around 6 months that Mr. X worked for the company. Now, Mr. X was removed from the post and he was forced to refund the salary of past 6 months that he has already received from the company.

Conclusion: Here, in the context of above provision, being contract between Mr. X and directors of company is void, Mr. X has to refund the salary of 6 months paid to him. But, Mr. X has the right to retain the reasonable amount according to his work.

8. Ram, Sham and Suresh are partners, as per the agreement each partner is entitled to equal profits and interest @5% pa on capital which is also equally contributed by each, over the period Ram has been the most devoted partner and looks after all the activities of the firm whereas other two partners are not giving that much time but still they are also looking into partnership firm. Now Ram has started demanding either extra profits for his efforts or remuneration for his work to which other partners are not giving consent, state rights of Ram in this situation?

Ans:- **Provision:** 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. Active partner acts as an agent of other partners for all acts done in the ordinary course of business. There is no such provision in the act to provide remuneration to the partners unless, it has been mutually agreed between all the partners or specified in the partnership deed to provide remuneration.

Facts of the case: In the given case, Ram, Sham and Suresh are partners sharing equal profit and interest on their capital @5% equally. Ram is actively involved in the day to day affairs of the firm whereas, Sham and Suresh are also looking into the matters of the partnership firm but devoting comparatively less time. So Ram demanded remuneration or extra share in profit for his excess efforts.

Conclusion: Here, there was neither an agreement between Ram, Sham and Suresh for giving remuneration to partners of the firm nor it was mentioned in the terms of the partnership deed. So, Ram does not have any right to demand extra share of profit or remuneration for his extra work.

9. Mr. X who is a underworld don called up Mr. A and asked Mr. A that if you do not sell your house to Mr. B then I will kidnap your son, Mr. A immediately called up Mr. B and offered to sell his house at an agreed amount, later on Mr. A wish to avoid the contract on the ground of coercion, undue influence, fraud etc, can he do so

Ans:- **Provision:** As per section 13 of the Indian Contract Act, 1872, when two or more persons are said to consent when they agree upon same thing in the same sense. Consent is said to be absent when it is caused by coercion, undue influence, fraud or misrepresentation. Section 15 states that coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. Contract induced by coercion is voidable

at the option of the party whose consent was so obtained. As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received. A person to whom money has been paid or anything delivered under coercion must repay or return it.

Facts of the case: In the given case, Mr. X, underworld don, enforced Mr. A to sell his house to Mr. B, otherwise he will kidnap his son. So, Mr. A immediately called up Mr. B and offered to sell his house at an agreed amount. Now, Mr. A wants to avoid the contract.

Conclusion: Here, Mr. B exercised coercion on Mr. A as he threatened to detain Mr. A's property and turned contract voidable at the option of aggrieved party. Thus, Mr. A is in position to avoid the contract.

10. Mr. X who is dealer of crackers and fireworks ordered goods worth Rs.5 Lacs from a trader of Shivakashi one month before the Diwali, the delivery which usually takes place 1 week, in this case took 4-5 weeks and the goods were delivered on the day of Diwali itself, Mr. X now intends to either return the goods or pay 20-30% less as the same goods needs to be sold at lower prices over the year, is Mr. X entitled to do so,

Ans:- **Provision:** According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract. Further, section of the Sale of Goods Act, 1830, unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not. But if delivery has been delayed by the fault of the seller of the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.

Facts of the case: In the given case, Mr. X, dealer of crackers and fireworks, ordered goods worth Rs. 5 lacs from trader Shivakashi one month prior the Diwali, with an usual delivery time of 1 week. But it took around 4-5 weeks and delivered the goods on the day of Diwali. Thus, Mr. X intends to either return the goods or pay lesser amount to recover the loss that he may sustain by selling goods at lower prices over the year.

Conclusion: Here, time was the essence of the contract as Mr. X ordered goods to sale them during the peak period of demand during Diwali season. But due to the fault of Shivakashi, delivery of goods got

delayed. Thus, Mr. X can return the goods or can claim reduction in price to the extent loss suffered by him.

11. Mr. Rahul who is owner of a plot of land gave a newspaper advertisement that he wish to sell his plot of land situated near Mumbai Agra highway at Rs.2,500/Sq feet, after few days he gets a phone call from Mr. Mohit that he is interested in buying the plot, all the documents were sent by Rahul to Mohit for verification through WhatsApp and Mohit also took legal advice, everything done by Mohit for his satisfaction and after doing all this he finally agreed to buy the land at agreed amount, the terms of the contract between them were that price is to be paid in 5 Instalments, first instalment was to be paid after 15 days from the date of contract and then each Instalment is payable with gap of 2 weeks, and legal formalities of transfer of title etc to be done after all instalments have been paid off, in between Mr. Mohit fails to pay last 2 instalments, can Mohit claim refund of amount already paid or is Mr. Rahul entitled to forfeit amounts already paid ?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, when a contract becomes void, the party who has received any benefit under it must restore it to the other party or compensate the other party by the value of the benefit. It is called as restitution. One of the exceptions to this rule says, in a contract for sale of immoveable property, reasonable amount received as an earnest money need not be refunded if the buyer fails to pay balance amount of consideration within agreed time. But if the amount paid is considerably large it cannot be forfeited as it would amount to penalty, thus unlawful.

Facts of the case: In the given case, Mr. Rahul agreed to sale his plot of land to Mr. Mohit, as an acceptance to the offer placed by Mr. Mohit on the basis of the invitations for offer made in the newspaper by him. They agreed to pay the price in 5 instalments and legal formalities to be completed after all instalments have been paid. Mr. Mohit paid first 3 instalments promptly, but failed to pay last two instalments.

Conclusion: Here, as the amount paid by Mr. Mohit is comparatively large than the earnest money. Thus, Mr. Rahul can deduct a reasonable amount as damages and is liable to refund balance amount.

12. Mr. Yogesh is a government contractor, he received work order from Andhra Pradesh State government to install hand pumps in rural areas, when Yogesh was about to start work in one of the village known as Devunoor situated in Warangal district, villagers there promised to Pay Rs.5,000 to Mr. Yogesh for the hand pump work, Mr. Yogesh agreed for the same, later on when the hand pump was installed, Villagers failed to fulfil their promise, Mr. Yogesh seeks your advice in this case? Can he recover the amount?

Ans:- **Provision:** According to section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration must be offered by the promisee or the third party at the desire or request of the promisor. ***(Durga Prasad v. Baldeo).***

Facts of the case: In the given case, Mr. Yogesh, government contractor, was appointed by Andhra Pradesh state government to install hand pumps in rural areas. Before starting the work, villagers in Devunoor village situated in Warangal district, promised to pay Rs. 5,000 to Mr. Yogesh for installing hand pumps, but after its installation villagers refused to pay the amount.

Conclusion: Here, Mr. Yogesh installed hand pumps at the desire of Andhra Pradesh state government and not the villagers. Therefore, Mr. Yogesh cannot recover the amount of work from the villagers.

13. Kamala promises to marry Suresh if he helps Kamala in getting divorce from his husband who is a regular drinker of alcohol, Suresh appoints an advocate to fight on Kamala's behalf, afterwards Court grants divorce to Kamala and her husband. When Suresh asks Kamala to marry him, she refuses, can Kamala be compelled to marry Suresh, and if not then can Suresh get back the money he spent on fighting the case?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, agreements inferring with marital duties are opposed to public policy. An agreement in contemplation of divorce is immoral and thus it is void-ab-initio. The rule of restitution says, benefits if any received under a contract which becomes void, it must be restored. The principle of restitution is that a person who has been unjustly enriched at the expense of another is required to make restitution to that other. But, this rule would not be applicable in the contracts which are void from the beginning.

Facts of the case: In the given case, Kamala promised to marry Suresh if he helps Kamala in getting divorce from his husband who is a regular drinker of alcohol. Thus, Suresh appoints advocate for the same and pays fees to him. Afterward, court grants divorce to Kamala and her husband. But, when Suresh asked Kamala to marry him, he refused.

Conclusion: Here, above contract is immoral and void-ab-initio. Thus, Suresh can neither compel Kamala to marry him nor can get back the money spent by him on fighting the case.

14. M/s Good deal limited appointed Mr. X as an agent to sell its products, as per the terms of the contract the agent was not permitted to sale the products below its listed price , Mr. X appointed Mr. Y as sub agent and put a similar condition that the products should not be sold below its listed price. Mr. Y sold

the products below listed price, good deal limited filed a suit against Mr. Y for breach of contract, is the suit sustainable ?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 8172, it is general rule of law that only parties to a contract may sue and be sued on a contract. This rule is known as doctrine of privity of contract. In other words, there can be stranger to a consideration but not for contract. Agent is person appointed to perform the contract on behalf of his principle and binds the principle by his acts. Whereas an agent appointed an agent is called as sub-agent.

Facts of the case: In the given case, M/s Good deal Ltd. Appointed Mr. X as his agent and told him not to sell the products below listed price. Mr. X appointed Mr. Y as a sub-agent and put similar condition that the product should not be sold below the listed price. But, Mr. Y sold product below listed price due to which M/s Good deal Ltd. Filed suit against Mr. Y for breach of contract.

Conclusion: Here, there was no contract existed between Mr. Y and M/s Good deal Ltd. as Mr. Y is a sub-agent of M/s Good deal Ltd. The breach of contract took place between Mr. X and Mr. Y. Thus. M/s Good deal Ltd. is a stranger to a contract and suit filed by him is not sustainable.

15. Mr. X bought goods of Rs.100,000 from M/s Rama and co which is a partnership firm consisting of 3 partners Mr. P, Mr. Q and Mr. R, after few weeks Mr. X paid Rs.75,000 to Mr. R, who then utilized that amount for his personal purposes without the knowledge of other partners, Mr. R is a partner whose authority to accept payments on behalf of the firm is restricted by the firm (Mr. x was unaware about these restrictions).

Mr. P and Mr. Q are following up with Mr. X for full payment of Rs.100,000 since the money paid to R never reached the firm and his authority has also been restricted by the firm in this regard. Mr. X now seeks your advice in this regard.

Ans:- **Provision:** According to section 20, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Facts of the case: In the given case, Mr. X bought goods worth Rs. 1,00,000 on credit from M/s Rama and Co., a partnership firm consisting of partners Mr. P, Mr. Q and Mr. R. Mr. R accepted payment of Rs. 75,000 from Mr. X, though his authority to accept payments on behalf of firm was restricted by mutual agreement and utilised the amount for his personal purpose without intimating to other partners,

but Mr. X was unaware of these restrictions. Now, Mr. P and Mr. Q are insisting Mr. X for full payment of Rs. 1,00,000.

Conclusion: Since, Mr. X was unaware about the restriction imposed on Mr. R to accept payment, Mr. R's act of accepting payment binds the firm. Thus, Mr. P and Mr. Q cannot compel Mr. X to pay full amount. Mr. X is liable to pay only Rs. 25,000 to the firm.

16. Rahul is a small trader who intentionally spoke on a phone call with his friend to create an impression that he is owner of a shopping mall, all this conversation was made while Rahul was with his friend Sonali, later Rahul asked Sonali for marriage and Sonali agreed believing that Rahul is a owner of a shopping mall.

Before their marriage Sonali came to know about truth as a result she refused to marry Rahul, is Sonali entitled to do so ?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral. A unilateral mistake is generally not allowed as a defense in avoiding a contract. But in certain cases, the consent given by a party under an error or mistake which is so fundamental as goes to the root of the agreement. In such case the agreement is void. Mistake as to the identity of the person contracted with also makes the contract void.

Facts of the case: In the above case, Rahul intentionally spoke on a phone call with his friend to create an impression that he is owner of a shopping mall, while he was with his friend Sonali. So, Sonali agreed to marry with Rahul believing that he is owner of a shopping mall. But before their marriage she came to know the truth that Rahul is a small trader. So she refused to marry him.

Conclusion: Here, there is mistake caused by Sonali as to the identity of Rahul which turned the contract void. Thus, Sonali can refuse to marry Rahul contract being void.

17. Mr. X and Mr. Y were dealing with each other for long now, whenever they enter into a contract they always include a clause in the agreement which states that either of the party to the contract cannot initiate legal action against other party for any dispute that might arise between them without the consent of other party, in one of their dealing Mr. X supplied faulty products to Mr. Y and, Mr. Y has returned the products due to the fault in them but Mr. X is not ready to refund the amount, can Mr. Y file suit for recovery of price paid and damages for loss against Mr. X

Ans:- **Provision:** According to section 28 of the Indian Contract Act, 1872, an agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings.

A contract of this nature is void except where a contract by which the parties agree to refer to arbitration any question between them which have already arisen or which may arise in future, is valid; but such a contract must be in writing.

Facts of the case: In the given case, Mr. X and Mr. Y were dealing with each other for a long period with a condition in the contract that either of the party to a contract cannot initiate legal action against each other, in case any dispute arises, without consent of other party. In one of the dealing Mr. X supplied defective goods to Mr. Y and thus he returned them to Mr. X and asked for the refund.

Conclusion: Here, in the context of above provision, Mr. X has restricted Mr. Y's right of enforcing legal proceedings which is opposed to public policy. Hence, above contract is void and Mr. Y can file suit against Mr. X and can claim refund and damages if any.

18. Mr. X who has recently qualified as Chartered accountant has joined a CA firm as an executive audit for monthly remuneration of Rs.50k, one of the clause of the agreement between them states that contract period is minimum one year and during this period of one year Mr. X cannot engage in his private practice in the same locality or any other activity which is competing with the firm, Mr. X left the job before the contract period ended and started his own practice in that locality, can Mr. X be legally restrained from practicing in that locality ?

Ans:- **Provision:** According to section 27 of the Indian Contract Act, 1872, 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 some exceptions, one of the exception says, an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade. Such an agreement, though in restraint of trade, will be valid, as the restrictions imposed are reasonable.

Facts of the case: In the given case, Mr. X, recently qualified chartered accountant, joined a CA firm as an executive auditor for a monthly remuneration of Rs. 50,000 with a condition that during a contract period of one year, Mr. X cannot engage in his own practice in the same locality. But, Mr. X left the job and started his own practice in that locality.

Conclusion: Here, restriction imposed on Mr. X is an exception as per the above stated provision. Thus, Mr. X can be legally restrained from practicing in that locality.

19. Mr. X has been in Mumbai since long, due to the COVID19 pandemic he decided to move back to his birth place in Bihar, he took a flight from Mumbai to Patna, after he arrived at Patna airport, A taxi driver took up his luggage without being asked to do so and asked Mr. X as to where he wants to go, Mr. X

replied with an address and The taxi driver took him to that place after reaching the place that Taxi driver demanded Rs.1,500 as charges (usual fare for such distance is Rs.850), in this case

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, a quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

Facts of the case: In the given case, Mr. X who returned to his native place in Bihar from Mumbai in flight after the COVID-19 pandemic. After arriving at Patna airport, taxi driver took up his luggage without being asked to do so and asked Mr. X as where he wants to go to which Mr. X replied. So taxi driver took him to the said place. After reaching the place, the taxi driver demanded Rs. 1,500 as a fare where usual fare was Rs. 800.

Conclusion: Here, Mr. X and a taxi driver entered into a quasi-contract which imposed a contractual liability on a taxi driver to drop Mr. X at the desired place and on Mr. X to pay reasonable fare. Thus, Mr. X is liable to pay reasonable amount i.e. Rs. 800 and not the amount demanded by the taxi driver.

20. Mr. X is a vegetables vendor, he applied for insurance policy and one of the clause of the application requires the applicant to give details of any disease or ailment which the applicant is suffering from, Mr. X is a suffering from high Blood pressure but he omitted to give details of this ailment, Insurance company later on canceled X's policy for non-disclosure of the disease, on what grounds insurance company is entitled to cancel the policy

Ans:- **Provision:** As per the provisions of section 17 of the Indian Contract Act, 1872, a party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. But where there is duty of a person to speak, silence amounts to fraud. In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

Facts of the case: In the given case, Mr. X, a vegetable vendor, applied for a insurance policy. One of the clauses of application required the applicant to give details of any disease or ailment which the applicant is suffering from. But, Mr. X omitted to give details that he is suffering from high blood pressure. On knowing this insurance company cancelled Mr. X's policy.

Conclusion: Here, Mr. X failed to disclose his ailment of high blood pressure where there was a implied duty of Mr. X to disclose it to insurance company at the time of applying for policy. There being an implied condition of contract between Mr. X and insurance company to disclose the fact of ailment to

which Mr. X failed on the basis of this insurance company is entitled to cancel the policy and avoid the contract.

21. Mr. X sold goods worth Rs.250,000 to Mr. Y on sale or return basis, as per the terms of the contract Mr. Y is allowed two weeks time to return the goods and if he fails to to return it will be deemed that he has bought the goods, but before expiry of two weeks Mr. Y pledged those goods with Mr. Z and borrowed Rs.150,000 from Z on the security of the goods. State rights and obligations of all the parties and state as to who is the owner of the goods in these circumstances?

Ans:- **Provision:** According to section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

(c) he does something to the good which is equivalent to accepting the goods.

Facts of the case: In the given case, Mr. Y who bought goods worth Rs. 2,50,000 from Mr. X on sale or return basis, was allowed a time of two weeks to return the goods if he fails it will be deemed that he has bought goods. But, before expiry of two weeks, Mr. Y pledged those goods with Mr. Z and borrowed Rs. 1,50,000.

Conclusion: Here, as per the clause of above section, Mr. Y does an act of pledging goods to third party i.e. Mr. Z which is equivalent to accepting the goods. Thus, now, Mr. Y is the owner of the goods and Mr. X can recover the price of goods from Mr. Y. Also, Mr. Z can retain the goods unless the amount borrowed is repaid along with interest.

22. M/s Sujay and Co is a partnership firm consisting of Five partners S, U, J, A & Y, after doing business as a firm for long, Mr. S wanted to retire from the firm and all partners also did not object to his retirement and finally he retired from the firm w.e.f. 1st Jan 2020, but neither S nor the firm gave any public notice of his retirement.

On 1st April 2020, the firm bought goods of Rs. 50,000 on credit from Mr. X who is regular goods supplier of the firm, due to sudden COVID19 surge the firm gone into bankruptcy and nothing could be recovered from the estate of the then partners of the firm U, J, A and Y.

Mr. S is financially sound so the creditor Mr. X wanted to sue Mr. S for goods supplied to the firm after his retirement (Rs.50,000) as well there are some old arrears due from the firm of Rs.135,000 (this related to transactions prior to S's retirement). Mr. X wants to recover both the amounts from S. State liability of S, in this regard?

Ans:- **Provision:** As per the provisions section 25 of the Indian Partnership Act, 1932, a partner is liable for all acts of the firm which are done by him or other partners, while he was a partner of the firm. Further, as per section 32, a partner who wishes to retire from the firm may do so if all other partners agree to his proposal of retirement. Relation between the retiring partner and other partner does not end until a public notice of his retirement is given, if he fails to do the same, then such retiring partner will be held liable for all the liabilities incurred even after his retirement, as outsiders may not be aware about such retirement and might have believed into the credit worthiness of the firm along with the credit worthiness of retired partner, except in case of sleeping partner's retirement; there is no need to give public notice.

Facts of the case: In the given case, Mr. S, U, J, A and Y are partners of M/s Sujay and Co. Mr. S got retired from the firm with the consent of all other partners w.e.f. 1st Jan 2020, but neither Mr. S nor the firm gave public notice of his retirement. On 1st April 2020, firm bought goods worth Rs. 50,000 on credit from Mr. X. regular supplier of goods, but due to COVID-19 lockdown, the firm got bankrupt and nothing could be recovered from the estate of the current partners, Mr. U, A, J and Y. Mr. X wants to recover the amount of goods supplied and earlier arrears Rs. 1,35,000 related to transactions prior to Mr. S's retirement, from Mr. S who is financially sound.

Conclusion: Thus, as per the context of above provision, Mr. S is liable to pay Rs. 1,85,000 to Mr. X as no public notice of his retirement was given and, Mr. S was a part of partnership firm when the liability of Rs. 1,35,000 was incurred.

23. Mr. X, Mr. Y and Mr. Z are partners of a firm dealing in furniture and electronics goods.

Mr. X bought certain stationary items in the name of the firm and the Invoice was also prepared in the name of the firm, Mr. X used those goods for his personal needs and failed to pay the amount to the supplier, that supplier is now asking other partners to pay for the same, can Mr. Y and Mr. Z be compelled to pay stationary bills outstanding

Ans:- **Provision:** According to the provisions of sections 19(1) and 22 of the Indian Partnership Act, 1932, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm

binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. But one of the exceptions to this rule says, the act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.

Facts of the case: In the given case, Mr. X, partner of the firm dealing in furniture and electronics goods with other partners named Mr. Y and Mr. Z, bought stationery items for his personal consumption in the name of the firm and also the bill was raised in the name of the firm. Later, he failed to pay the amount of the bill due to which supplier asked Mr. Y and Mr. Z to pay the bill.

Conclusion: Here, the act of purchasing stationery items was not within the implied authority of Mr. X as firm was a dealer of furniture and electronics nor related to normal course of business. Thus, the supplier cannot be held the firm liable for the bill outstanding and hence, no liability of Mr. Y and Mr. Z arises. But, Mr. X is liable to pay the outstanding bill amount to the supplier.

24. Mrs. X and Mrs. Y are very good friends, Mrs. X takes coaching classes of 5-10 standard students, Mrs. Y's son is in 10th standard, she requests Mrs. X to give coaching to her son without any fees and Mrs. X also agrees to it, later on Mrs. X stops coaching to Mrs. Y's son due to some problems to her, Mrs. Y is very angry at Mrs. X's act and wants to take legal action against Mrs. X, can Mrs. Y take action against Mrs. X ?

Will your answer change, had Mrs. X allowed 50% discount in fees to Mrs. Y and Mrs. Y also agreed for the same and paid the fees and then Mrs. X stopped giving coaching to Mrs. Y's son?

Ans:- **Provision:** As per section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration is one of the essential elements of a valid contract. Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value as absence of consideration turns the contract void.

Facts of the case: In the given case, being good friends of each other, Mrs. Y asked Mrs. X, who is engaged in activity of coaching classes, to take coaching of Mrs. Y's son studying in standard 10th

without any fees to which Mrs. X agreed. But later on Mrs. X stops coaching to Mrs. Y's son due to some problems to her, as a result Mrs. Y wants to file suit against Mrs. X.

Conclusion: Here, Mrs. X was providing coaching to Mrs. Y's son free of cost and there has been no consideration moved to Mrs. X from Mrs. Y or any other person for providing coaching. Contract between them being without consideration, is void. Thus, Mrs. Y cannot file suit against Mrs. X as contract is void. On the other hand, if Mrs. X allowed 50% discount in fees to Mrs. Y to which Mrs. Y also agreed and paid the fees, then Mrs. Y can file suit against Mrs. X for discontinuing coaching to her son as contract consists of some consideration and consideration need not be adequate.

25. Mr. X inquired rate and availability of of a particular medicine to Mr. Y, to this inquiry Mr. Y replied that the rate is Rs.25/strip and its available for supply, Mr. X placed the order and Mr. Y agreed to supply within one week, while placing the order Mr. X also mentioned that he has an order in hand for export of the medicine to a party in Dubai and Mr. Y's failure to supply would amount to cancellation of his export order and consequent losses.

Mr. Y sold all his stock in the market at higher rate and wrote an email to Mr. X that his stock has got finished and he is unable to supply the medicine to Mr. X, Mr. X had no other option but to cancel export order and pay damages to the party in Dubai (who placed order with Mr. X).

Can Mr. X claim damages for loss of profit or for damages suffered by him or both?

Ans:- **Provision:** According to section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a 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. Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

Facts of the case: In the given case, Mr. X inquired the availability of a particular medicine to Mr. Y to which Mr.Y replied that rate is Rs. 25/strip and it's available for supply, due to which Mr. X placed order for the goods mentioning that he has an order in hand for export of the same to a party in Dubai and Mr. Y's failure to supply those goods would amount to cancellation of his order and consequent losses, to which Mr. Y agreed. But, later on, Mr. Y sold all his stock in the market at higher rate and wrote an

email to Mr. X that his stock got finished and won't be able to supply the medicine, which resulted into the cancellation of export order of Mr. X and required to pay damages to the party in Dubai.

Conclusion: Here, Mr. X inquired Mr. Y about the special circumstances of the contract for supply of medicines for the purpose of exporting the same. But then also Mr. Y did not supply the goods and due to which, Mr. X failed to fulfill the export order and has to pay damages to that party. Thus, Mr. Y is liable to pay not only damages incurred by Mr. X but also the forgone profit which would have accrued to Mr. X if the export order would have fulfilled

26. 'X' who has recently completed 16 years of his age, went to a moneylender and borrowed Rs.5,000 from him for purchase of certain essentials like grocery and vegetables. Out of the total amount received he paid Rs.2,000 to his younger sister (who is dependent on X) for purchase of essentials. After few months that moneylender asked X to repay the loan but X refused as he has no income source (he owns certain property in Pune worth Rs. 2 Lacs),

Can moneylender recover the amount from Minor?

Ans:- **Provision:** As per the provisions of section 11 of the Indian Contract Act, 1872, minor is person who has not completed 18 years of his age. A minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A claim for necessaries supplied to a minor or to any other person whom such minor is legally bound to support necessaries supplied to a minor is enforceable by law. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.

Facts of the case: In the given case, X, (16 years old) is a minor, borrowed Rs. 5,000 from moneylender for the purchase of necessaries like grocery and vegetables. Out of the total amount borrowed, he purchased necessaries of Rs. 3,000 and provided amount Rs. 2,000 to his sister who is dependent on him. Later on, moneylender asked X to repay the loan, but X refused as he has no income source, though he has property on his name in Pune worth Rs. 2,00,000.

Conclusion: Here, money borrowed was used by X for purchasing the essential goods and also the amount provided to his sister was also for the necessaries. Thus, X, being minor, is not personally liable to repay the loan, but money lender can recover the loan of Rs. 5,000 out of his estate in Pune as used for purchasing necessaries for himself and his dependent sister.

27. Mr. X wanting to invest his money in some good company, applied for 300 equity shares of a company, Mr. X while applying for the shares of the company read prospectus which contained a statement that

Mr. Y is the director of the company. Mr. X in fact did not know who Mr. Y is and he bought the shares looking at the profitability of the company.

Later it came to the knowledge of Mr. X that Mr. Y is a very big businessmen but he is not the director of that company of which he bought the shares, now he wish to cancel his application since he has been given false information through prospectus of the company.

Is Mr. X entitled to get refund of the amount paid?

Ans:- **Provision:** According to section 17 of the Indian Contract Act, 1872, fraud means and includes acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract. One of the acts is the suggestion, as a fact, of that which is not true, by one who does not believe it to be true. But also the other party must have relied upon the representation and must have deceived and suffered some loss. A mere attempt at deceit by one party is not fraud unless the other party is actually deceived. If the representation does not come to the notice of the party, it cannot be said to have mislead that party because it does not lead that party at all.

Facts of the case: In the given case, Mr. X applied for 300 equity shares of a company and read in the prospectus of the company that Mr. Y is the director of the company. Mr. did not know who Mr. Y is and he bought shares looking at the profitability of the company. Later, he came to knowledge that Mr. Y is a very big businessmen but not the director of the said company of which h bought shares and thus, wants to cancel his application on that basis.

Conclusion: Here, Mr. X bought shares looking at the profitability and not by believing on the fact that Mr. Y is director of that company. Thus, Mr. X cannot cancel his application and won't get any refund of the amount paid as he does not got mislead by the fact that Mr. Y is not the director of the company rather he is a businessmen as he never believed the same. Hence, contract between Mr. X and the company would be valid and can't be avoided by Mr. X.

28. Mr. X owns a plot of land near Pune, he offers it for sale to Mr. Y for Rs.500,000

Next day Mr. Y wrote a letter to Mr. X showing his intention to buy the plot for Rs.400,000,

After few days Mr. Y again wrote a letter stating that he wants to buy the plot for Rs.500,000

In this case we can conclude that second letter of Mr. Y amounts to

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, when the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he

is said to have made a counter offer. Counter-offer amounts to rejection of the original offer and thus, original offer gets lapsed. It is also called as Conditional Acceptance.

Facts of the case: In the given case, Mr. X offered to sale his plot of land near Pune for Rs. 5,00,000 to Mr. Y to which Mr. Y replied through letter showing his intention to buy that plot for Rs. 4,00,000. After few days Mr. Y again wrote letter to Mr. X stating that he is ready to buy that plot for Rs. 5,00,000.

Conclusion: Here, Mr. Y's first offer to buy plot for Rs. 4,00,000 was an counter offer to the original offer placed by Mr. X due to which original offer got lapsed, but no reply was received by Mr. X to this counter offer. And thus, the second offer made by Mr. Y would be new offer which may either be accepted or rejected by Mr. X.

29. Mr. X booked an air ticket for travelling from Delhi to Mumbai

on the back of the ticket there were some printed conditions

one of the conditions was that the airlines company would not be liable for any loss of luggage over and above Rs.5,000

Mr. X did not read the conditions, during the transit his luggage was lost

The luggage carried valuable worth Rs.60,000

State liability of airlines company in such circumstances

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, both communication of offer and communication of acceptance is required in order to make the contract valid. Section 3 of the Act prescribes in general terms two modes of communication namely, (a) by any act and (b) by omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other. Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions is also conveyed by the offeree again tacitly or without him even realizing it provided terms should be presented in such a manner that a reasonable man can become aware of them before he enters into contract.

Facts of the case: In the given case, Mr. X booked air ticket for travelling from Delhi to Mumbai with conditions printed on the back of the ticket. One of the conditions was that Airline Company would not be liable for any loss of luggage over and above Rs. 5,000. Mr. X did not read the conditions and his luggage worth Rs. 60,000 was lost during the transit.

Conclusion: Here, there is valid contract between Airline Company and Mr. X as it is deemed that Mr. X has tacitly accepted the train ticket agreeing with the conditions printed on the back of the ticket though the fact was that he failed to read those conditions and binds him. Thus, as per the terms of contract, the Airline Company is liable to pay only Rs. 5,000 as compensation for the lost luggage of Mr. X.

30. Mr. Rahul who is resident of Chennai, is on visit to New Delhi for some work

He booked a room in the hotel through online booking

After he visited the hotel he found that one piece of paper containing certain conditions was lying on a table in the room

That paper contained one condition which stated that the hotel management is not liable for any loss of valuable belonging to its guests

In the night a thief jumped in to the hotel premises from back side compound wall and also somehow entered Rahul's room

Rahul lost valuable worth Rs.50,000

can Rahul recover the loss from hotel management for not having enough security and safety measures in place

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, both communication of offer and communication of acceptance is required in order to make the contract valid. Ordinarily, the acceptance of a document containing the contract implies acceptance of all the terms contained in the document. Except, where the terms are communicated after the contract, those terms would not be binding on the parties to it.

Facts of the case: In the given case, Mr. Rahul, on his visit to New Delhi, booked a room in the hotel though online booking. Later on when he visited the hotel, he found one piece of paper containing terms and conditions lying on the table in the room. One of the conditions stated that hotel management would not be liable for any loss of luggage or valuable belonging to the guest. In the night, thief steals his valuables worth Rs. 50,000.

Conclusion: Here, at the time of entering into contract, there were no conditions convened to Mr. Rahul. But later, after accepting the contract, hotel management communicated those terms to Mr. Rahul. Thus, those terms and conditions are not binding on Mr. Rahul and he can recover loss of Rs. 50,000 from the hotel management.

31. Mohit took admission in a coaching class, he paid first instalment at the time of admission and also filled up admission form and did all other formalities

while making payment of the second instalment he found that the receipt of the fees paid had certain conditions printed on the back of the receipt

One of the conditions Stated that the class management would not be liable in case a student's bike or moped is lost from the parking area of the class

On a day while Mohit was attending the class, his bike parked in the parking went missing

can Mohit recover the loss from class management

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, both communication of offer and communication of acceptance is required in order to make the contract valid. Ordinarily, the acceptance of a document containing the contract implies acceptance of all the terms contained in the document. Except, where the terms are communicated after the contract, where the contracting party would not be in a position to avoid the contract, those terms would not be binding on the parties to it.

Facts of the case: In the given case, Mohit took admission in a coaching class by filing the admission form and also paid the first installment along with it. While making payment of the second installment, he found that the receipt of the fees paid had certain conditions printed on the back of the receipt. On of the conditions stated that the class management would not be liable in case the student's bike or moped is lost from the parking area of the class. On the very next day while Mohit was attending the class, his bike parked in the parking went missing.

Conclusion: Here, Mohit was not aware about the conditions to the contract at the time of entering the contract as it were communicated to him later on. Thus, the conditions which were convened to Mohit at the time paying the second installment of his coaching fees, does not bind him. Hence, he can recover the loss accrued to him due to loss of bike, from the coaching class management.

32. Sunny is a first-year student of Delhi university

His bike was having some issue so he went to a garage and asked the mechanic to look into the problem

the garage owner asked sunny to leave the bike and come next day morning, during this time the bike would be repaired, and charges were fixed at Rs.250

Sunny agreed for the same and left the bike for repairing at the garage

The garage owner issued at receipt at the time of contract which stated that in case of loss of vehicle the garage owner would not be liable for more than Rs.10,000

Sunny's bike was missing from the garage

what is the liability of garage owner in this case assuming the bike was of Rs.75,000

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, both communication of offer and communication of acceptance is required in order to make the contract valid. Ordinarily, the acceptance of a document containing the contract implies acceptance of all the terms contained in the document. Except, where the terms of the contract are so unreasonable, such term would not be applicable to the contract and would not bind the parties to it.

Facts of the case: In the given case, Sunny, first year student, went to a garage with his bike having some issues and asked mechanic to look into the problem. The garage owner asked sunny to leave his bike at garage and he would get it repaired with a charges fixed at Rs. 250 to which Sunny agreed and left his bike there. The receipt issued by the garage owner contained a term stating that in case of loss of vehicle the garage owner would not be liable for more than Rs. 10,000. Later, Sunny's bike was missing from the garage having worth Rs. 75,000.

Conclusion: Here, though the conditions to the contract were communicated to Sunny at the time of entering into contract itself, but the conditions are so unreasonable. Thus, such condition stating liability of the garage owner limited to Rs. 10,000 only, would not be binding on the parties to the contract. Hence, the garage owner would be liable to pay the reasonable amount as per its market price and condition at the time when it was lost.

33. M/s Modified limited has developed an application known as "Janta Ka Vyapar" where in wholesalers and retailers can buy and sell goods

A buyer (who is usually a retailer) has to log in to the application and then he has to place the order of required goods, to any of the party offering those goods for sale, after that the party to whom order has been made (who is usually a wholesaler) approves the offer, and after order has been approved seller delivers the goods to buyer, payment is to be made immediately on delivery

One Mr. Shyam Loya ordered goods of Rs.50,000 from M/s Chartered Goods Suppliers, the order remained unapproved for 2 days

After two days M/s Certified goods supplier approved the offer and delivered the goods to Mr. Shyam Loya

Is Mr. Shyam Loya bound to accept the delivery?

Ans:- **Provision:** According to section 2(b) of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise. One of the legal rules regarding valid acceptance is that in case of specific offer, acceptance to the offer can be given only by the person to whom it is made.

Facts of the case: In the given case, Mr. Shyam Loya (retailer) ordered goods of Rs. 50,000 from M/s Chartered Goods (wholesaler) through an online platform named as "Janta ka Vyapar" developed by

M/s Modified Limited, but his order remained unapproved by M/s Chartered Goods for 2 days. After two days M/s Certified Goods supplier approved the offer and delivered the goods to Mr. Shyam Loya.

Conclusion: Here, the offer was specifically made to M/s Chartered Goods and not to M/s Certified Goods supplier. Thus, Mr. Shyam is not bound to accept the delivery of goods by M/s Certified Goods as no offer was made to him for the supply.

34. M/s Guru Grace sports goods traders supplied certain sports material like cricket set etc. to "Champ" who is just 13 years old belonging to a very rich family

Champ's parents have died in an accident and all the property of Champ's parents was handed over by the court to his Maternal uncle and the court has asked champs uncle to take care of the property till the time Champ becomes major

"Champ" is a caption of the cricket team of his school

Is there any liability on Champ or his property for goods bought from Guru Grace?

Ans:- **Provision:** Minor is a person who has not completed 18 years of his age. As per the provisions of the Indian Contract Act, 1872, a minor is not competent to contract and any agreement with of by minor is void-ab-initio i.e. void from the beginning itself. A minor is not personally liable, but he is liable to out of his property for the necessaries supplied to him or to anyone whom he is legally bound to support. Necessary goods are restricted to articles which are reasonably necessary to the minor to maintain a bare existence. The English Sale of Goods, 1893, defines necessaries under section 2 as "goods suitable to the condition in life of such infant or other person, and to his actual requirement at the time of sale and delivery". Such goods need not necessarily belong to a class of useful goods, but they must be (i) suitable to the position and financial status of the minor and (ii) necessary at the time of both sale and delivery.

Facts of the case: In the given case, M/s Guru sports traders supplied certain sports material (criket set) to "Champ" who is 13 years old belonging to very rich family. Champ's parents have died in an accident and their property was handed over by the court to his maternal uncle and was asked by the court to take care of Champ till he becomes major. Champ is a captain of his school cricket team.

Conclusion: Here, cricket kit provided to Champ falls within the meaning of necessaries as it suits his financial status. Thus, there would be no personal liability of Champ but his property will be liable for the cricket kit supplied to him.

35. M/s Chartered Traders sold a Mobile phone for Rs.10,000 (similar phone available in near by shops for Rs.8,000) to a person who was under the influence of alcohol

Next day that person came back to the shop and wanted refund of his money and wanted to return the phone back

on what ground he can return the phone

Ans:- **Provision:** According to section 12 of the Indian Contract Act, 1872, a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. Further, section 16 states that, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.

Facts of the case: In the given case, M/s Chartered Traders sold a mobile phone worth Rs. 8,000 to a person who was under the influence of alcohol. So, next day that person came back to the shop and wanted to return the phone back and take refund.

Conclusion: Here, drunker person was of unsound mind when he entered the contract and couldn't form the rational judgment. Also, the shop owner was in a position to dominate the will of that person as he was drunk. Thus, it is apparent from the circumstances of the contract that consent given by the drunken person was obtained by undue influence. Therefore, the contract is voidable

36. Mr. X agreed to supply goods of Rs.100,000 to Mr. Y

As per terms of contract 100% of the amount is to be paid in advance

Goods are to be supplied within 5 days of advance payment

as per the terms of contract Failure to perform by either party gives other party right to claim damages of Rs.25,000

Mr. Y paid the amount as agreed but Mr. X failed to supply goods even after 15 days of advance payment

Non supply of goods within the time caused Mr. Y loss of Rs.5,000

How much amount Mr. Y can recover from Mr. X as damages

Ans:- **Provision:** As per the provisions of section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a 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. According to English law, the sum so fixed in the contract may be interpreted either as liquidated damages or as a penalty while the courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract. Thus, Section 74 entitles a person complaining of breach of contract to get reasonable compensation and does not entitle him to realize anything by way of penalty.

Facts of the case: In the given case, Mr. X agreed to supply goods of Rs. 1,00,000 to Mr. Y, with a condition of 100% advance payment and goods would be supplied within 5 days of it. Also, is either of the party to a contract fails to perform as required, then it would give either of the other party to claim damages of Rs. 25,000. Mr. Y paid the advance amount, but Mr. X failed to supply goods even after 15 days of advance payment due to which Mr. Y suffered a loss of Rs. 5,000.

Conclusion: Here, Mr. Y cannot ask for Rs. 25,000 from Mr. X as it would be penal in nature. Thus, he can recover the reasonable amount i.e. Rs. 5,000 as a damages that he has suffered due to failure to supply goods by Mr. X.

37. Mr. X Promised to supply goods of Rs.10,000 to Mr. Y

As per their contractual conditions either party to the contract can rescind the contract by paying Rs.100 as penalty to other party

Mr. X failed to supply the goods, and this caused a loss of Rs.1,000 to Mr. Y

What will be the amount of damages that Mr. Y can recover from Mr. X in this case?

Ans:- **Provision:** As per the provisions of section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a 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. According to English law, the sum so fixed in the contract may be interpreted either as liquidated damages or as a penalty while the courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract.

Facts of the case: In the given case, Mr. X promised to supply goods of Rs. 10,000 to Mr. Y with a condition that either of the party to a contract can rescind the contract by paying Rs. 100 as penalty to other party. Mr. X failed to supply the goods due to which a loss of Rs. 1,000 was caused to Mr. Y.

Conclusion: Here, Mr. Y can recover only Rs. 100 as a compensation for the loss that he suffered due to Mr. X's failure to supply the goods as Indian courts award only the reasonable compensation but not exceeding the amount so mentioned in the contract.

38. Mr. X lost a bet of Rs.5,000 to Mr. Y

Mr. X is not ready to pay the amount

Mr. Y asks Mr. X to pay the amount else he will let everyone their colony know that he has not paid the amount of bet lost

Mr. X promised to pay the amount of bet provided Mr. Y does not disclose that Mr. X did not pay the amount

In this case the second contract of non-disclosure of X's failure is ___ ?

Ans:- **Provision:** As per section 30 of the Indian Contract Act, 1872, an agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest. Further, since wagering agreements are void, transactions collateral to them are not affected and thus, collateral contracts are valid. Also, the abstinence of act (not doing any act) is valid consideration.

Facts of the case: In the given case, Mr. X lost a bet of Rs. 5,000 to Mr. Y but, he is not ready to pay the amount. Mr. Y asks Mr. X to pay the amount else he will let everyone in their colony know that he has not paid the amount of bet lost. That's why; Mr. X promised to pay the amount of bet provided Mr. Y does not disclose that Mr. X did not paid the amount.

Conclusion: Here, first contract between Mr. X and Mr. Y is of wagering and thus, it is void. While, the second contract is of non-disclosure of Mr. X's failure with a valid consideration of Mr. Y's act of not disclosing the fact that Mr. X did not paid the amount of bet lost and it is a valid contract, being a collateral transaction to a void contract.

39. Mr. X promised to pay Rs.100,000 in consideration of Mr. Y's promise to kill Mr. Z

Mr. X paid 50% amount in advance but Mr. Y did not kill Mr. Z

Mr. X wants to recover the amount of advance paid from Mr. Y, according which provisions he can claim refund of advance paid?

Ans:- **Provision:** As per section 23 of the Indian Contract Act, 1872, every agreement of which the object or consideration is unlawful is void. There are some cases, where the consideration or object is said to be unlawful. One of the cases, states that when a consideration involves injury to the person or property of another person. In general term the injury means any criminal or wrongful harm.

Facts of the case: In the given case, Mr. X promised to pay Rs. 1,00,000 in consideration of Mr. Y's promise to kill Mr. Z. He also paid 50% amount of the contract in advance, but Mr. Y did not kill Mr. Z. Thus, he wants to recover the amount of advance paid to Mr. Y.

Conclusion: Here, the contract between Mr. X and Mr. Y to kill Mr. Z is an unlawful act which involves injury or even death of Mr. Z. The above contract, being illegal, is void and hence, Mr. X cannot recover the amount of advance paid from Mr. Y as it would result into enforcement of an illegal agreement by the court of law.

40. Mr. Kumar Owns a property near Delhi (worth Rs. 100 crore) in connection to which there is dispute going on

Mr. Kumar do not have money to fight the case, so he requested his Friend Mr. Kushal to lend Rs.10 Lacs to him to fight the case relating to his land

Mr. Kushal agreed on the condition that if Mr. Kumar wins the case he must share 25% of the land to Mr. Kushal

Mr. Kumar agreed for the same

Afterwards Mr. Kumar won the case but refused to share land with Kushal but instead offered to pay interest on the amount borrowed

Can Mr. Kushal recover share in land?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, maintenance is an agreement in which a person promises to maintain suit in which he has no interest. Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action. The agreement for supplying funds by way of Maintenance or Champerty is valid unless;

A) It is unreasonable so as to be unjust to other party or

B) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the Bonafede object of assisting a claim believed to be just.

Facts of the case: In the given case, Mr. Kumar owns a property near Delhi worth Rs. 100 crore in connection to which there is ongoing dispute, but he does not have the money to fight the case. So, he requested his friend Mr. Kushal to lend Rs. 10 lacs to him for fighting case. Mr. Kushal agreed to lend Rs. 10 lacs to Mr. Kumar, provided that if Mr. Kumar wins the case he must share 25% of the land to him, to which Mr. Kumar also agreed. But after winning the case, Mr. Kumar refused to pay the share of land to Mr. Kushal, instead offered to pay interest on the amount borrowed.

Conclusion: Here, given case is an example of maintenance and champerty which is valid unless there involves the motive of gambling. Mr. Kushal gambled in the given case. Thus, the above contract is void. Hence, Mr. Kushal cannot recover the 25% share of land from Mr. Kumar as it is unreasonable, but he can recover the amount Rs. 10 lacs lent to Mr. Kumar.

41. Mr. Jay hired a godown for 3 years at monthly rent of Rs.5,000

As per the terms of the agreement 12 months rent has to paid at the beginning of the year itself

After the 3 months of the agreement the godown was destroyed by fire

Can Mr. Jay claim refund of rent paid and if yes as per which provisions of law and for what time

Ans:- **Provision:** According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Such rule is called as rule of restitution. In essence, restitution is not based on loss to the plaintiff but on benefit on benefit which is enjoyed by the defendant at the cost of plaintiff which is unjust for the defendant to retain. Also, when the subject-matter of a contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged.

Facts of the case: In the given case, Mr. Jay hired a godown for 3 years at a monthly rent of Rs. 5,000, with a condition that rent of 12 months has to be paid at the beginning itself. Accordingly, Mr. Jay paid the rent of whole year, but after 3 months of the agreement, the godown was destroyed by fire.

Conclusion: Here, due destruction of the subject-matter (i.e. godown) of the above contract, contract has become impossible to be performed further and thus, becomes void. But as per the above stated rule of restitution, Mr. Jay has the right to claim the refund of rent paid in proportionate amount i.e. approximately 9 months' rent can be recovered.

42. Mr. X owns a jewelry Shop in Pune, on the famous Laxmi road

Mr. X is very happy with whatever he has done till now and wants to settle in USA and stay there with his Son

he offered for sale his running business for Rs.25 Crores and Rs.5 Crores extra for goodwill

Mr. Y accepts his offer but puts a condition that Mr. X should not start a similar business in anywhere in the world as long as he is alive

Mr. X accepts the condition

check validity of the agreement

Ans:- **Provision:** As per the provisions of 27 of the Indian Contract Act, 1872, 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 some exceptions, one of the exception says, 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, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid, provided the local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

Facts of the case: In the given case, Mr. X owns a jewelry shop in Pune, on the famous Laxmi road. But now, he wants to settle with his son in USA and stay there. So, he offered to sale his running business for Rs. 25 crores and Rs. 5 crores extra for goodwill, to Mr. Y. Mr. Y accepts the offer with a condition

that Mr. X should not start a similar business in anywhere in the world as long as he live and Mr. X agrees to it.

Conclusion: Here, the restriction of local limits imposed by Mr. Y within which Mr. X cannot carry out the similar business, is so unreasonable. Thus, the above agreement between Mr. X and Mr. Y is void.

43. Mr. Rahul orders edible oil from Mr. Tushar at an offer rate of Rs.140/kg

As per their terms of contract failure of either party will allow other party to claim 10% amount of order as damages

10% damages have been fixed on the basis of variation that keeps on taking place in the market rate of edible oil (3% to 15% variation in prices of oil is noticed usually every few days)

determine whether these

pre-decided damages are liquidated damages in nature or punitive in nature and state if these can be recovered under Indian Law in case of breach by either party

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages or a penalty. Indian law makes no distinction between penalty and liquidated damages. Section 74 provides that if a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named. It entitles a person complaining of breach of contract to get reasonable compensation and does not entitle him to realise anything by way of penalty.

Facts of the case: In the given case, Mr. Rahul orders edible oil from Mr. Tushar at an offer rate of Rs. 140/kg. As per their terms of contract failure of either party will allow other party to claim 10% amount of order as damages which are fixed on the basis of variation that keeps on taking in the market rate of edible oil (usually 3% to 15% variation in prices is noticed).

Conclusion: Here, damages for breach of contract decided between the parties in above case are in the nature of liquidated damages, as they are reasonable as per the prevailing market conditions. Thus, in case of breach of contract by either party, 10% amount of order can be recovered as damages.

44. Mr. Tinku wanted to start a business of toys for which he had no capital of his own

Tinku went to a moneylender and asked for Rs.100,000 as loan,

moneylender agreed on the condition that he should be paid 1/4th of profits of the business to be carried by Mr. Tinku

Tinku used to buy the goods and sell them and whatever profit was earned was shared by Tinku and the moneylender

The moneylender had no interface in the business except he had access to accounts and was sharing profits

After few years Tinku gone missing as he left India and settled in Dubai, all the creditors of Tinku are now after the moneylender and they intend to recover their debts from moneylender

Can moneylender be held liable for the acts of Tinku as a partner in the business of Tinku ?

Ans:- **Provision:** According to section 4 of the Indian Partnership Act, 1932, partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Further, section 6 states that existence of Mutual Agency is the cardinal principle of partnership law. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Facts of the case: In the given case, Mr. Tinku borrowed money Rs. 1,00,000 from money lender for carrying out a business of toys, on a condition that moneylender should be paid 1/4th share of profit of the business carried out by Mr.Tinku. Accordingly, Mr. Tinku used to buy the goods and sale them without any interface of moneylender and whatever profit was earned was shared by the Tinku with moneylender. After few days Mr.Tinku went missing as he left India and settled in Dubai, all the creditors of Mr. Tinku are asking moneylender to pay their debts.

Conclusion: Here, there is no agent principal relationship between Mr. Tinku and moneylender, as he was having no interface in the business of Mr. Tinku other than a share of profit. Thus, there being no mutual agency, the creditors of Mr. Tinku cannot held moneylender liable as a business partner of Mr. Tinku.

45. Mr. Shahid and Mr. Wahid are partners of a business carried by them

Mr. Imran who was appointed as manager of the partnership firms used to tell customers of the firm that he is also partner in the firm

One of the customers of the firm paid Rs.500,000 as Advance to the firm

Shahid and Wahid went missing from India and settled in Singapore

That customer, who had belief in Imran's statement that he is partner in the firm, wants to file suit for recovery of the amount, on Imran

Mr. Imran is contending that he was in fact not a partner but mere manger of the firm

Can Mr. Imran be held liable for the liability assuming that the amount was not received by Imran nor did he get any share in that amount, the whole amount was taken by Shahid and Wahid

Ans:- **Provision:** According to section 28 of the Indian Partnership Act, 1932, 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. Partnership by holding out is also known as partnership by estoppel. In other words, when a person represents himself, or knowing permits himself, to be represented as partner in the firm, he is liable like partner in a firm to anyone who on the faith of such representation has given credit to the firm.

Facts of the case: In the given case, Mr. Shahid and Mr. Wahid are partners in a firm. They have appointed Mr. Imran as a manager of the firm. But he used to tell the customers of the firm that he is also partner in the firm. One of the customer of the firm paid Rs. 5,00,000 as advance to the firm. Mr. Shahid and Mr. Wahid went missing from India and settled in Singapore. That customer , who had belief in Imran's statement that he is a partner in the firm, wants to file suit for recovery of the amount on Imran though he then contended that he was in fact not a partner but mere manager of the firm.

Conclusion: Here, Mr. Imran represented himself as a partner of the firm in front of the customer, which made him partner of the firm by estopple. Thus, Mr. Imran would be liable for the amount of advance borrowed from the customer Rs. 5,00,000 as a partner by holding out.

46. Mr. Sanjog and Mr. Deven are partners of the firm

Mr. Praveen who is friend of Deven had good political connection

Sanjog and Deven agreed to pay 5% commission on goods sold to any customer referred by Praveen

Praveen used to communicate to people that he is also partner of the firm and they can deal with the firm

Mr. Ashok has never met Praveen nor did he ever heard of Praveen's false statement that he is partner in the firm.

Mr. Ashok advanced Rs.200,000 to the firm which the partners are not repaying

Mr. Ashok has now heard from someone that Praveen is also partner of the firm

Mr. Ashok intends to recover the amount from Praveen

Ans:- **Provision:** According to section 28 of the Indian Partnership Act, 1932, 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 called as partner by estoppels. A person may himself, by his words or conduct has 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 the cases is identical. But 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'.

Facts of the case: In the given case, Mr. Sanjog and Mr. Deven are the partners of the firm. Mr. Praveen who is friend of Deven, having good political connection, agreed with Mr. Sanjog and Mr. Deven to pay 5% commission on goods sold to any customer sent by Mr. Pravaeen. But Mr. Praveen used to communicate to people that he is also partner of the firm and they can deal with the firm. Mr. Ashok, who did not met Praveen nor he ever hear of false statement that he is a partner in the firm, advanced Rs. 2,00,000 to the firm which the partners are not repaying. But later on, when Mr. Ashok heard from someone that Mr. Praveen is not a partner in the firm, he intended to recover the amount from Mr. Praveen.

Conclusion: Here, Mr. Praveen had never made a representation to Mr. Ashok that he is a partner in the firm and nor he acted on that belief. Thus, Mr. Praveen will be liable to only those persons to whom he represented himself to be partner of the firm. Hence, Mr. Ashok cannot recover the advanced amount from Mr. Praveen.

47. M/s X limited is a company having paid up share capital of Rs.1 Crore (which gives right to total 50,000 votes)

M/s Y limited holds 45% voting power of M/s X limited

M/s Z limited holds 20% voting rights in X limited

M/s XYZ limited holds 75% voting rights in Y Limited and 60% voting rights in Z limited

M/s X limited is subsidiary of

Ans:- **Provision:** According to section 2(87) of the Companies Act, 2013, "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-half of the total share capital either at its own or together with one or more of its subsidiary companies.

Facts of the case: In the given case, M/s X Ltd. is a company having paid-up share capital of Rs. 1 crore. M/s Y Ltd. Holds 45% voting power of M/s X Ltd. M/s Z Ltd. holds 20% voting power in X Ltd. M/s XYZ Ltd. holds 75% voting rights in Y Ltd. and 60% voting rights in Z Ltd.

Conclusion: Here, M/s Y Ltd. and M/s Z Ltd. are subsidiaries of M/s XYZ Ltd. as it holds more than half of the total share capital in both respectively. While M/s XYZ Ltd. indirectly has the control over voting rights of M/s Y Ltd. (45% share) and M/s Z Ltd. (20%) in M/s X Ltd. amounting a total control of 65%.

Thus, being having control on more than half of the total share capital of M/s X Ltd., M/s X Ltd. is a subsidiary company of M/s XYZ Ltd.

48. M/s PQR Inc is a company incorporated in USA,

Indian firms import goods from the company from USA, but the company don't have any place of business in India

Can this company be treated as foreign company within the meaning of Companies act 2013?

Ans:- **Provision:** As per section 2(42) of the Companies Act, 2013, foreign company means any company incorporated outside India which-

i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii) conducts any business activity in India in any other manner.

Facts of the case: In the given case, M/s PQR Inc. is a company incorporated in USA. Indian firms import goods from the company from USA, but the company has no place of business in India.

Conclusion: The above company M/s PQR Inc is not a foreign company, as it does not have any effective place of business in India nor it conducts any business activity in India.

49. M/s PQR Inc is a company incorporated in USA, it has no branch in India but it's online products are bought in India through its website, the company accepts payments through online mode and then goods are dispatched through courier to place of customers in India, can M/s PQR Inc be termed as foreign company within the meaning of Companies act 2013

Ans:- **Provision:** As per section 2(42) of the Companies Act, 2013, foreign company means any company incorporated outside India which-

i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii) conducts any business activity in India in any other manner.

Facts of the case: In the given case, M/s PQR Inc is accompany incorporated in USA, has no branch or physical place of business in India, but it's online products are bought in India through it's website. The company accepts the payment through online mode and then goods are dispatched through courier to the place of customers in India.

Conclusion: Here, though M/s PQR Inc. incorporated in USA, does not have any physical place of business in India. It has a business place in the form of electronic platform of it's website in India. Thus, M/s PQR Inc. is a foreign condition.

50. M/s Jadoo limited is a company incorporated under companies Act 1956 as a private company and its turnover in immediately previous year was Rs.1.75 Crores and it's paid up capital is Rs.25 Lacs, it's 75% voting power is with another company which is a public limited company

M/s Jadoo limited may be treated as a

Ans:- **Provision:** According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company and has a minimum paid-up share capital as may be prescribed. Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

Further, section 2(85) states that small company means company, other than the public company;

i) of which paid-up share capital does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and

ii) 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 twenty crore rupees.

Except, a holding company or a subsidiary company; a company registered under section 8; or a company or body corporate governed by any special Act.

Facts of the case: In the given case, M/s Jadoo Limited is incorporated under companies act, 1956 as a private company and its turnover for the immediately preceding year was Rs. 1.75 crores and it's paid-up capital is Rs.25 lacs. It's 75% voting right is with another company which is a public limited company.

Conclusion: Here, as per the context of above provision, M/s Jadoo Limited, being subsidiary company of a public company, is a public company and not a private company. Also, M/s Jadoo Limited shares the holding-subsidiary relation with another public company, it falls within the exception to the definition of small company. Hence, M/s Jadoo Limited is neither a private company nor small company.

51. Mr. Raju went to a shop and asked for Apple iPhone 11Pro, the Shopkeeper told that its price is Rs.85,000

Raju asked the shopkeeper to show him the phone first so that he can decide to buy or not to buy

The shopkeeper shown him the phone and while he was looking into the phone and examining its functions and all

person standing next to Raju snatched the phone from Raju and ran away

Who should bear the loss in this case?

Ans:- **Provision:** According to section 26 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 the buyer's risk whether delivery has been made or not. But, one of the exception to the aforesaid rule says, the duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

Facts of the case: In the given case, Mr. Raju went to a mobile shop and asked for Apple iPhone 11 pro, the shopkeeper told him the price of the phone as Rs. 85,000. Mr. Raju asked the shopkeeper to s how him the phone so that he can decide whether to buy or not. The shopkeeper showed him the phone. While he was looking into the phone and examining its function's and all, person standing next to Raju snatched the phone from Raju and ran away.

Conclusion: Here, as Mr. Raju haven't bought the phone which was snatched by the thief, risk related to the phone lies with the shopkeeper. Also, Mr. Raju, as a bailee, has taken proper care of the phone. Thus, being the owner of the phone, the shopkeeper is liable to bear the loss of phone.

52. Mr. Kailash got an order for 2,000 liters of edible oil from Mr. Yogesh, rate was agreed to be Rs.100 per liter

As per their usage of trade Mr. Yogesh was supposed to transfer the money through RTGS only after that he will get delivery of goods

Even after 5 days of contract, Yogesh did not transfer the money, Kailash sold the goods after giving notice of his intention to re-sell to the buyer

after waiting for one more week, Kailash finally sold the oil which was earlier sold to Yogesh to someone in the market @Rs.95 per liter (which is market rate of oil on that day)

Can Kailash recover the loss of Rs. 5 per liter from Yogesh

Ans:- **Provision:** According to section 54 of the Sale of Goods Act, 1930, the right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer. The unpaid seller can exercise the right to re-sell the goods, provided, he gives notice to the buyer of his intension to sale 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. Further, on resale of the goods, the seller is also entitle to recover the difference between the contract price and resale price, from the original buyer as damages and can retain the profit if the resale price is higher than the contract price.

The seller has the right to resale the goods which are perishable in nature without giving any notice to the original buyer.

Facts of the case: In the given case, Mr. Kailash got an order for 2,000 liters of edible oil from Mr. Yogesh at the rate Rs. 100 per liter. As per their usage of trade Mr.Yogesh was supposed to transfer the money through RTGS only after that he will get delivery of goods. But even after 5 days of contract, Mr. Yogesh did not transferred the money, thus, Mr. Kailash gave notice of his intension to resale the goods. After waiting for one more week, Mr.Kailash finally sold the oil which was earlier sold to Mr. Yogesh to someone in the market @Rs. 95 per liter i.e. at prevailing market price of that day due to which he incurred a loss of Rs. 5 per liter.

Conclusion: Here, Mr. Kailash sold the oil at lower price than the contracted price after giving a reasonable notice to Mr. Yogesh as no response to the notice was received from him. Thus, Mr. Kailash can recover the loss of Rs. 5 per liter of oil sold which is accrued to him due to the failure of Mr. Yogesh to fulfill the contract.

53. Ramesh bought certain goods from Tushar

The goods are presently lying in the godown owned by Mr. Gaurav

Ramesh has agreed to pay the price only after he makes further sale of those goods (goods are still in the godown)

Ramesh sold those goods to third parties and gave delivery orders to his customers asking Gaurav, the godown owner, to deliver the goods to these customers

Meanwhile Tushar asked Ramesh to pay for the goods but he is not answering to Tushar's phone calls

Tushar has now asked Gaurav to not to deliver the goods till the time Ramesh makes payment for the goods

Can Tushar exercise right of Lien in these circumstances?

Ans:- **Provision:** According to the provisions of section 47 of the Sale of Goods Act, 1930, subject to the provisions of this Act, 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.

Further, section 49 states that, the unpaid seller of goods loses his lien thereon,

a) 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.

b) when the buyer or his agent lawfully obtains possession of the goods;

c) by waiver thereof.

Facts of the case: In the given case, Ramesh bought goods from Tushar which are lying in the godown owned by Mr. Gaurav. Ramesh has agreed to pay the price only after he makes further sale of those goods (goods are still in the godown). Ramesh sold those goods to third parties and gave delivery orders to his customers asking Gaurav, the godown owner, to deliver the goods to these customers. But, when Mr. Tushar asked Ramesh to pay for the goods, he did not attend his phone calls. That is why Tushar asked Gaurav to not to deliver the goods till the time Ramesh makes payment for the goods.

Conclusion: Here, Tushar lost his right of lien over the goods which are sold to Ramesh as he had given right to Mr. Gaurav (bailee) to deliver the goods as per the order of Ramesh, though Tushar was unpaid for the goods by Ramesh. Hence, Tushar can file suit for recovery of money but cannot exercise the right of lien over the goods sold to Mr. Ramesh.

54. Mr. X who is a dealer of electronic goods, sold certain goods worth Rs. 350 thousands to Mr. Y on one weeks credit

Before the expiry of one week, there comes a fact to the knowledge of Mr. X that Mr. Y has not paid any of his liabilities which felt due for payment in last 2 months

In such circumstances can Mr. Y be called as insolvent within the meaning of provisions of Sales of goods act and if yes on what ground (assume that he has not yet adjudicated as insolvent by court)

Ans:- **Provision:** According to the provisions of the Sale of Goods Act, 1930, a person is said to be insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not. In other words, the act does not defines the insolvent person as a one who has been adjudicated as insolvent by the court.

Facts of the case: in the given case, Mr. X, dealer of electronic goods, sold goods worth Rs. 350 thousands to Mr. Y on one-week credit. But, before the expiry of credit term allowed, Mr. X came to know that Mr. Y has not paid any of hi liabilities felt due in last 2 months.

Conclusion: Here, Mr. Y will be called as insolvent in terms of the Sale of Goods Act, 1930, as he has failed to pay his liabilities which are due. Thus, Mr. X can exercise his right of lien provided he is in possession of those goods.

55. Mr. X was passing from the street when he found a gold ring lying on the street

he picked up the ring and went on to a nearby house and asked them to keep the ring and return it to its true owner

Even after 3 weeks no one came to demand the ring

Mr. X now wants to get back the ring from the nearby house but the person to whom the ring was handed over has refused to return the ring

Is there any rule by which Mr. X can claim the ring?

Provision: As per section 71 of the Indian Contract Act, 1872, a person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee. Thus, the finder of lost goods has-

a) to take proper care of the property as man of ordinary prudence would take
b) no right to appropriate the goods and
c) to restore the goods if the owner is found.

The finder of lost goods can retain it as against world at large except its true owner.

Facts of the case: In the given case, Mr. X found a gold ring while passing from the street. He picked that ring and gave to the person in nearby house asking them to keep it with them and return to its true owner. After a lapse of 3 weeks, still no one came to demand the ring, thus, Mr. X went to that house of a person to whom he has handed over the ring, asking them to return the ring. But they refused to hand over the ring.

Conclusion: Here, Mr. X has the right to retain the ring as he is the finder of it. Hence, he can retain the ring against world at large except its true owner and can demand the ring from that person.

85. Mr. Danny found a Mobile phone near the river

Mr. Danny picked up the phone and kept it in his car,

the window of the car remained open while it was Parked

Someone took away the phone from Danny' Car

Later on Phone's true owner came to Danny and demanded the phone

When Danny checked it was missing from his car

The true owner wants to recover damages from Danny for loss of phone

Ans:- **Provision:** According to the provisions of section 71 of the Indian Contract Act, 1872, a person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, the finder of lost goods has-

a) to take proper care of the property as man of ordinary prudence would take
b) no right to appropriate the goods and

c) to restore the goods if the owner is found.

Facts of the case: In the given case, Mr. Danny picked the phone that he found near the river and kept in his car. While the window of the parked car was opened, someone took away the phone from Danny's car. Later on, true owner of the phone came to Danny and demanded his phone. But, the phone found was missing from the car of Danny.

Conclusion: Here, Mr. Danny is liable to restore the loss caused to its true owner due to loss of phone as he was liable to take the proper care of phone as a bailee till he finds the true owner. Therefore, Mr. Danny would be held to be liable in the absence of ordinary care which a prudent man would have taken.

86. Mr. X owns a factory at Noida, a part of plant and machinery in his factory was not working because of which the production was suspended in his factory

Mr. X delivered the part for repairing to a nearby Repairing company

As per the oral conversation the part was supposed to be returned within 3-4 days

But the part was finally repaired and given back only after 15 days

Mr. X wants to recover the loss due to delay in repairing and also special damages for loss of profit arising from non-delivery within agreed time?

Can special damages be recovered in such circumstance?

Ans:- **Provision:** According to section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a 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. Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages. The special damage can be claimed only on a previous notice.

Facts of the case: In the given case, Mr. X, owner of the factory at Noida, delivered the part of plant and machinery which was not for repairing to a nearby company. As per the oral conversation the part was supposed to be repaired and delivered back within 3-4 days. But due to failure of the repairing company, it took around 15 days to deliver the parts of the machine. Due to this Mr. X incurred a loss of profit arising from non delivery of goods within agreed time and also, the loss due to delay in repairing the parts of the machine.

Conclusion: Here, Mr. X has not convened the special circumstances to repairing company that delay in delivery of repaired parts of machine would lead to failure on the part of Mr. X to fulfill the order of his customers on agreed time and may lead to loss of profit. Thus, Mr. X can recover only the loss which is accrued to him due to delay in repairing the machinery parts and cannot recover the special damages for loss of profit arising from non delivery within agreed time.

87. X and Y are partners in construction business

X who also owns a cement whole sell shop, was assigned the job of procuring cement required for the business of partnership

X knew that the prices of cement are going to increase in coming month and the firm would require large quantity of cement after few months

X bought cement bags worth few Lacs in his own name and with his own money

After few months he supplied the cement bags to the partnership firm at higher rate

After few months Y came to know about the profit X made by supplying the cement bags to the firm

state any liability of X in such circumstance?

Ans:- **Provision:** According to section 16 of the Indian Partnership Act, 1932, subject to contract between the partners,

a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Facts of the case: In the given case, Mr. X and Mr. Y are the partners of the construction firm. Mr. X, who also owns a cement whole sell shop, was assigned the job of procuring cement required for the business of partnership firm. Though Mr. X was having knowledge that the prices of the cement are going to increase in coming month and the firm would require large quantity of cement after few months, he bought cement bags worth few lacs for his own shop with his own name and money and didn't bought it for the firm. After few months, when the firm was in requirement of cement bags, Mr. X supplied those bags to the partnership firm at higher rate making enough profit. Later on, Mr. Y came to know about Mr. X's act of making profit by supplying the cement bags to the firm.

Conclusion: Here, Mr. X made a secret profit through the transaction with the firm and also the business connection of the firm. Since, there was no contract between the firm and Mr. X for the supply cement bags to the firm, Mr. X is liable to account to the firm for profits of the business so made by him.

88. X wrote a letter to Y asking if he is interested in selling his old motor car for Rs.50,000

Y wrote another letter in which he agreed to sell his car to Mr. X at price offered by him

Y's letter was lost in transit from post department

Is there any contract between X and Y?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, both communication of offer and communication of acceptance is required in order to make the contract valid. Where a proposal is accepted by a letter sent by the post, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.The golden rule is that proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance. But it is necessary that the letter is correctly addressed, adequately stamped and duly posted. In such an event the loss of letter in transit, wrong delivery, non-delivery etc., will not affect the validity of the contract.

Facts of the case: In the given case, Mr. X wrote letter to Mr. Y asking whether he is interested in selling his old motor car for Rs. 50,000, to which Mr. Y agreed and sent his assent to Mr. X through letter. But, Mr. Y's letter got lost in transit from post department.

Conclusion: Here, Mr. X, the proposer, will be bound by Mr. Y's acceptance even if the letter of acceptance is delayed in post or lost in transit. It means there is a valid contract between Mr. X and Mr. Y for the sale of motor car at an agreed price.

89. X offered for sale his old vehicle to Y over a phone call for Rs.4,000

Y replied on the phone that he is ready to buy the vehicle, but due to heavy rain the phone call got disconnected

Y presumed that X has heard and understood his acceptance

in fact, X could not listen to the acceptance of Y

Is there any contract between X and Y?

Ans:- **Provision:** According to provisions of the Indian Contract Act, 1872, when an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received. However, in case of a call drops and disturbances in the line, there may not be a valid contract because it is duty of the acceptor to satisfy himself that the acceptance has been heard and understood by the proposer.

Facts of the case: In the given case, Mr. X offered to sale his old vehicle to Mr. Y over a phone call for Rs. 4,000. Mr. Y replied on the phone that he is ready to buy the vehicle, but due to heavy rain phone

call got disconnected and presumed that Mr. X has heard and understood his acceptance, where in fact Mr. X could not listen to his acceptance.

Conclusion: Here, it is the duty of Mr. Y to confirm that whether Mr. X has heard his acceptance or not. Mr. X did not hear to Mr. Y's acceptance due to technical problem and thus, Mr. Y cannot presume that Mr. X has heard his acceptance and assented to the contract. Hence, there is no valid contract between Mr. X and Mr. Y as the communication of acceptance is not completed

90. Mr. X was the single member of a one person company

Mr. X took insurance of the property of the company in his own name and paid the premium himself

Afterwards there took place fire in companies' premises which caused heavy loss to the company

Is Mr. X entitled to insurance claim for the loss to his company?

Ans:- **Provision:** According to provisions of the Companies Act, 2013, separate legal entity is the unique feature of a company. In other words, when a company is registered, it is clothed with a legal personality and has almost same rights and powers as a human being. Section 2(62) one person company (OPC) as a company which has only one person as a member. One person company (OPC) has a separate legal entity with a limited liability of the member. Its existence is distinct and separate from that of its members. A member does not even have an insurable interest in the property of the company.

Facts of the case: In the given case, Mr. X, being the single member of a one person company, took insurance of the property of the company in his own name and paid the amount of insurance himself. After that there caught a fire in the companies' premises which caused heavy loss to the company.

Conclusion: Here, being a member of the company, Mr. X is separate entity from that of the company. Thus, Mr.X has no insurable interest in the property of company. Hence, Mr. X cannot claim the insurance claim for the loss of his company.

91. X Limited's almost all the equity shares were held by Mr. Raju, he was also debenture holder of the company which had charge on company's asset

After few years the company goes into liquidation and its assets were insufficient to pay its creditors

Other secured creditors of the company claimed that Mr. Raju being owner of the company should not be allowed to have claim on company's assets as debenture holder

Can Mr. Raju have claim on the assets of the company as debenture holder?

Ans:- **Provision:** As per the provisions of the Companies Act, 2013, 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. The separate legal entity is the unique feature of a company. In other words, when a company is registered, it is clothed with a legal personality and has almost same rights and powers as a human being.Its existence is distinct and separate from that of its members. Equity shareholders are the owners of the company while preference shareholder, debenture holders, etc. are the creditors of the company. In the event of liquidation of the company, creditors are the first who are paid out from the assets of the company while after paying them all the balance would be paid to equity shareholders. **(Salmon Vs. Salmon)**

Facts of the case: In the given case, Mr. Raju was the only shareholder of all the equity shares of X Limited and he was also the debenture holder of that company which had charge on company's assets. Later on, when company went into liquidation, its assets fell insufficient to pay its creditors. Other secured creditors of the company claimed that Mr. Raju being owner of the company should not be allowed to have claim on company's assets as debenture holder.

Conclusion: Though Mr. Raju, being equity shareholder of whole shares, is owner of the company, he is also the creditor. And Mr. Raju is a separate person and the company too is a separate legal entity. Being a debenture holder of the company, Mr. Raju is also the creditor and can rank as a creditor for debentures held by him.

92. X Limited is an Indian company liable to pay 40% tax, to avoid its tax liability, it formed another company under British law, and transferred all its assets to the British company for nominal consideration

then took them back on hire from the same company thereby transferring its profits to the British company

Can we treat British company and Indian company as one single entity for the purpose of levy of tax?

Ans:- **Provision:** According to the provisions of the Companies Act, 2013, 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. Further, corporate veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership. In certain matters concerning the law of taxes, duties, and stamps particularly where question of the controlling interest is in issue in order to

protect revenue/tax. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity

Facts of the case: In the given case, X limited, an Indian company liable to pay tax @40%, formed another company under British law, and transferred all its assets to the British company for nominal consideration and then took them back on hire from the same company thereby transferring its profit to the British company.

Conclusion: Here, the court can disregard the separate legal entity of X Limited and British company on the ground of lifting of corporate veil as the intension of X Limited behind establishing a company under British law was to evade the tax and revenue from its business in India. Thus, X Limited and British company can be treated as one single company for the purpose of levy of tax.

93. Mr. X has been doing four different businesses with each having different trade name

To have corporate identity, he wants to incorporate One person companies for each business

He has decided to form four companies, in all the four companies he will be holding 100% share and capital and each will be registered as OPC

Is there any legal barrier in forming OPC in these circumstances?

Can he form one company for all the four businesses in the form of OPC?

Ans:- **Provision:** According to section 2(62) one person company (OPC) as a company which has only one person as a member. One person company (OPC) has a separate legal entity with a limited liability of the member. No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

Facts of the case: In the given case, Mr. X is doing four different businesses with each having different trade name. For the purpose of having corporate identity, he wants to incorporate one person companies for each of his business and thus, decided to form four different one person companies in which he would hold 100% share and capital in each of the four OPC's.

Conclusion: Here, as per the context of above provision, one person can become member or nominee in only single one-person company. Thus, Mr. X can either form only single OPC and can carry out all four businesses under that single name but cannot form four different OPC's for all four businesses.

94. M/s X Limited was formed as a private company

Its shareholders include

165 single holders

30 Couples holding shares jointly (totaling to 60 persons)

100 Employees who have been allotted shares of the company during their employment (out of which 60 employees have left the job with this company but they are still members (shareholders) of the company)

Has the company exceeded limit of 200 members and if yes should it register as a public company?

Ans:- **Provision:** According to section 2(68) of the 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. Further, a person who are in the employment of the company; and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members, and

iii) prohibits any invitation to the public to subscribe for any securities of the company.

The private company can have maximum 200 members.

Facts of the case: In the given case, M/s X Limited was formed as a private company. It's shareholders include 165 single shareholders, 30couples holding shares jointly and 100 employees who have been allotted shares of the company during their employment out of which 60employees have left the job but they are still the members of the company.

Conclusion: Here, as per the context of above provision, persons holding shares jointly would be considered as a single member. So, those 30couples, totaling to 60persons, holding shares jointly, would be considered as a 30 members only. Further, those 100 persons were allotted shares during their employment would not be included in the total number of members. Thus, the company currently has 195 members (i.e. 165+30+0= 195). Hence, the company has not exceeded the limit of 200members and does not require getting itself registered as a public company.

95. A company which as per its object clause could run a business of manufacturing of alcoholic drinks for human consumption

Its directors entered a contract with M/s RK and co. for import of Machinery required to start oil refinery

As per the contract RK and co. supplied the machinery to the company and has requested payment for the same

Meanwhile one of the shareholders of the company has raised objection to the directors' act of setting up oil refinery as it is beyond the object clause of the company

state liability of the company in such circumstances

Ans:- **Provision:** According to provisions of the Companies Act, 2013, the memorandum of association shall state the object clause of the company i.e. the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. It is called as "doctrine of ultra vires", which mean beyond the powers of the act. When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultra vires the company, and hence null and void.

Facts of the case: In the given case, a company which as per its object clause could run a business of manufacturing of alcoholic drinks for human consumption. Its directors entered a contract with m/s RK and Co. for import of machinery required to start oil refinery. Accordingly, M/s RK and Co. supplied the machinery and asked for the payment of the same. But one of the shareholders objected to the directors' act as it is beyond the object clause of the company.

Conclusion: Hence, starting a oil refinery does not falls within the object clause of the company and thus it ultra vires to the provisions of the act as its main clause was of liquor manufacturing. Therefore, the company is under no obligation to pay for the machinery purchased by its directors.

96. As per articles of association of a company, it was allowed to borrow money beyond Rs.1 crore only after passing a ordinary resolution it its general meeting

The company applied for the loan of Rs.5 Crores to ICICI bank and was granted the loan, no officials of the bank ever examined whether or not the company has called up general meeting and whether or not a special resolution has been passed

Later on it was discovered that no such resolution was passed as required by its articles

Is the contract between bank and the company valid?

Ans:- **Provision:** As per section 399 of the Companies Act, 2013, any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company, on payment of prescribed fees. It confers the right of inspection to all. It is, therefore, the duty of every person dealing

with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents. It is called as doctrine of constructive notice. The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. Because it is cannot be assumed that outsiders are deemed to have notice of the internal affairs of the company. If an act is authorized by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. **(The Royal British Bank vs. Turquand).**

Facts of the case: In the given case, the company applied for a loan of Rs. 5crores to ICICI bank and was granted the loan, no officials of the bank had examined whether the company has called up general meeting and whether or not they had passed a special resolution. Whereas, article of association of the company allowed it to borrow money beyond Rs. 1 crore only after passing a special resolution in its general meeting. Later on it was discovered that no such resolution was passed by the company as required by its articles.

Conclusion: Here, the officials of the bank who granted loan to the company was of the view that the company had completed all the necessary procedures (i.e. passing a resolution) and formalities for applying the loan and it would be deemed that the company has passed the resolution as the bank cannot have the knowledge of the internal affairs of the company. Thus, there is valid contract of loan between the bank and the company.

97. Mr. X runs a business of providing fake Aadhar (UID) cards to Bangladeshi/Pakistani infiltrators working in any place in India for which he charges Rs.1,000 per card

Mr. Y who has a printing press has been hired by Mr. X for this work for agreed consideration

Mr. Y has no role to play except that he prints the cards (all the design is prepared by X and provided to Y in soft copy) and hands them over to X

Mr. Y has not been paid for last 2 months any consideration for about 500 cards printed by him

Can Mr. Y file suit and recover the amount

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, illegal contract is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void-ab-initio. All illegal agreements are void but all void agreements are not necessarily illegal. In the case of illegal contract, even the collateral transactions namely transactions which are to be complied with before or after or concurrently along with main contract also become not enforceable and are tainted with illegality. An illegal agreement is punishable under different laws in force.

Facts of the case: In the given case, Mr. X runs a business of providing fake Aadhar (UID) cards to Bangladeshi/Pakistani inflators working in any place in India by charging fees of Rs. 1,000 per card. Mr. X hired Mr. Y, owner of the printing press, for printing these cards as per the design provided by Mr. X in soft copy at an agreed consideration. But, Mr. Y remained unpaid for about last 2 months for nearly 500 cards printed by him.

Conclusion: Here, the business carried out by Mr. X is illegal in nature and thus it is void-ab-initio. Further, the contract between Mr. X and Mr. Y for printing of those cards is also void as it is a collateral transaction to the main contract of providing fake Aadhar cards which is illegal. Therefore, the court will not enforce the contract between Mr. X and Mr. Y and thus, Mr. Y cannot file suit for the recovery of the unpaid amount to him.

98. Mr. X is a person who is usually of sound mind but occasionally of unsound mind

Mr. X sold his land to Mr. Y for Rs.10,00,000

Mr. Exe who is brother of Mr. X wants to get the land back contending that the contract between Mr. X and Mr. Y is void on the ground of Mr. X being not competent to contract

Mr. Y is contending that on the day of contract Mr. X was behaving like a sane person and was in a position to understand the effect of contract on his interest

the contract in such case will be presumed to be _____ unless proved otherwise

Ans:- **Provision:** According to section 11 of the Indian Contract Act, 1872, every person is competent to contract who,

i) is of the age of majority according to the law to which he is subject and
ii) is of sound mind and
iii) is not otherwise disqualified from contracting by any law to which he is subject.

Further, section 12 of the act states that a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of sound mind, but occasionally of unsound mind,may not make a contract when he is of unsound mind. A contract by a person who is not of sound mind is void. Such contracts would be valid unless proved void by the party to the contract.

Facts of the case: in the given case, Mr. X, a person usually of sound mind and occasionally of unsound mind, sold his land to Mr. Y for Rs. 10,00,000. Mr. Exe, brother of Mr. X, wants to get the land back on the ground that the contract between Mr. X and Mr. Y is void as Mr. X was not competent to

contract at that time. Whereas Mr.Y is contending that on the day of contract Mr. X was sane and was in a position to understand the effects of the contract on his interest.

Conclusion: Here, the contract for sale of land between Mr. X and Mr. Y is valid unless it is proved by Mr. Exe that Mr. X was of unsound mind at the time of making contract. Thus, till then contract is valid and can be enforced.

99. During May 2020, Mr. C got engaged with Ms. D and the marriage was supposed to take place in July after consulting Panditji and getting a Muhurta

In 10th June, Mr. C wrote a letter to Ms. D, in which he refuses to marry Ms. D due to some reasons

Ms. D wrote a letter in reply and requested Mr. C to marry her and not to commit breach of contract

In this case the contract is assumed to be

Ans:- **Provision:** As per the provisions of section 39 of the Indian Contract Act, 1872, 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. Anticipatory breach of contract can be done either by expressly by words spoken or written, or impliedly by the conduct of one of the parties. 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, unless he has signified, but words or conduct, his acquiescence in its continuance. The promisee can either treat the contract as rescinded and sue the other party for the damages for the breach of contract immediately or 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.

Facts of the case: In the given case, Mr. C got engaged with Ms. D in May 2020 and the marriage was supposed to take place in July after getting muhurta. On 10th June Mr. C wrote a letter to Ms. D refusing to marry her to which Ms. D replied through letter requesting him to marry her and not to commit breach of contract.

Conclusion: Here, Mr. C has committed the anticipatory breach of contract and Ms. D has neither rescinded the contract nor sued Mr. C which means she wants to continue with the contract and wait for the performance till due date. Thus, the contract between Mr. C and Ms. D is alive and operative till it is due for performance.

100. During May 2020, Mr. C got engaged with Ms. D and the marriage was supposed to take place in July after consulting Panditji and getting a Muhurta

On 10th June, Mr. C wrote a letter to Ms. D, in which he refuses to marry Ms. D due to some reasons

Ms. D wrote a letter and put an end to the contract of marriage

is the contract still subsisting?

Ans:- **Provision:** As per the provisions of section 39 of the Indian Contract Act, 1872, 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. Anticipatory breach of contract can be done either by expressly by words spoken or written, or impliedly by the conduct of one of the parties. 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, unless he has signified, but words or conduct, his acquiescence in its continuance. The promisee can either treat the contract as rescinded and sue the other party for the damages for the breach of contract immediately or 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.

Facts of the case: In the given case, Mr. C got engaged with Ms. D in May 2020 and the marriage was supposed to take place in July after getting muhurta. On 10th June Mr. C wrote letter to Ms. D refusing to marry her due to some reasons. Ms. D replied to it through letter and ended the contract of marriage with Mr. C.

Conclusion: Here, anticipatory breach of contract of marriage has been committed by Mr. C. Thus, Ms. D having choice to end the contract agreed to Mr. C's refusal and ended the contract. Hence, the contract is discharged due to breach by Mr. C and not subsisting. Thus, as Mr. C has breached the contract of marriage with Ms. D, he is liable to pay damages to Ms. D due to his non-performance.

101. Mr. Rahul promised to his wife Ms. Poornima, if she keeps her parents happy, He will get a new set of gold bangles to her

Ms. Poornima used to take care of her Father in law and Mother in law and was providing them food in time and all other things she was taking care

Mr. Rahul did not provide the bangles even after 1 year of his promise and is just saying he will get it next month

Ms. Poornima being a woman of modern age wants to file suit for breach of promise by Rahul

Can she file suit?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic types of agreements are not enforceable in court of law and hence they do not result into contracts. **(Balfour v.**

Balfour). All the agreements between husband and wife are not social in nature. In fact, the contract of marriage can be enforced in court of law as the intension of the parties is deemed to be creating legal relationship.

Facts of the case: In the given case, Mr. Rahul promised to get a new set of bangles to his wife Ms. Poornima if she keeps his parents happy. Accordingly, Ms. Poornima took a proper care of her father in law and mother in law by providing them food on time and all other things. But, Mr. Rahul did not provided the bangles set even after 1 year of his promise and just postponing it to next month every time. Due to this, Ms. Poornima, being a woman of modern age, wants to file suit for breach of contract.

Conclusion: Here, the contract between Mr. Rahul and Ms. Poornima is social in nature and there was no intension to create legal relationship. Thus, Ms. Poornima cannot file suit against Mr. Rahul for not providing new set of bangles since it was not a legal promise.

102. Mr. Rahul is the owner of a plot of land, his neighbour Mr. Surya asked him if he is willing to sell his plot for Rs. 10 Lacs

Mr. Rahul replies I won't sell below Rs.15 Lacs

Next day Surya called up Mr. Rahul and said he is willing to buy the plot for Rs. 15 Lacs

In this case Reply of Rahul that he won't sell below Rs. 15 Lacs May be treated as _____ and Surya's willingness to buy at Rs.15 Lacs May be treated as _____

Ans:- **Provision:** According to section 2(a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal/ offer. Offer is different from mere statement of intension, invitation to offer, etc. In case of "an invitation to make an offer", the person making the invitation does not make an offer rather invites the other party to make an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. A statement of price is not an offer but an invitation to offer.

Facts of the case: In the given case, Mr. Surya asked Mr. Rahul, owner of the plot of land, that whether he is willing to sell his plot for Rs. 10Lacs. Mr. Rahul replied to it and said the he won't sell the plot below Rs. 15 Lacs to which Mr. Surya replied next day that he is willing to buy that plot for Rs. 15 Lacs.

Conclusion: Here, firstly Mr. Surya made an offer to Mr. Rahul that if he would sell his plot of land for Rs. 10 Lacs. But, Mr. Rahul reply that he won't sell the plot below Rs.15 Lacs was just an mere statement of price which is an invitation made by him for others to place the offer for purchasing that plot. Whereas Mr. Surya's reply stating his willingness to buy that plot for Rs.15 Lacs was an offer made to Mr. Rahul which can either be accepted or rejected by him.

103. Mr. Rahul is Hindi film producer

Ms. Puja is a struggler in Bollywood and wants to make career in singing

Mr. Rahul promised to Puja that she will be given a signing opportunity in his next movie

Mr. Rahul put a condition on Puja that she should not sing in any other movie for next 3 years other than Rahul's movies

Puja also agreed to the condition

Is the contract between Mr. Rahul and Ms. Puja valid?

Ans:- **Provision:** As per section 27 of the Indian Contract Act, 1872, 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 some exceptions. One of the exceptions says, an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade. However, an employer cannot prevent an employee from earning his living by the exercise of his skill and use of his knowledge.

Facts of the case: in the given case, Mr. Rahul is a Hindi film producer and Ms. Puja, a struggler in Bollywood, wants to make career in singing. Mr. Rahul promised Ms. Puja that she will be given a singing opportunity in his next movie provided that she should not sing in any other movie for next 3 years other than Mr. Rahul's movies and Ms. Puja also agreed to this condition.

Conclusion: Here, the contract between Mr. Rahul and Ms. Puja is of professional nature and not an employment contract. Thus, the restriction on Ms. Puja as not to work in any other movies other than that of Mr. Rahul's movie is an agreement in restraint of her lawful profession and therefore, the above contract is void and not binding on the parties to it.

104. Mr. Kailash is the owner of a property situated in Lonavala (near Pune) which is part of a housing society

As per the by-laws of the society every member of the society is liable to pay Rs.100,000 per annum as maintenance charges

Mr. Suyash buys the property from Mr. Kailash at agreed consideration

After few months secretary of that housing society calls up Mr. Suyash and demands maintenance charges to which Suyash refuses on the ground that he never contracted with the society for payment of any such charges

Can Mr. Suyash be held liable to pay annual charges by the society?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, though the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. This rule, that stranger to contract cannot sue is known as "doctrine of

privity of contract". But the rule is subject to some exceptions. One of the exceptions is in case of covenants running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

Facts of the case: in the given case, Mr. Kailash is the owner of a property situated in Lonavala (near Pune) which is a part of housing society. As per the by-laws of the society every member of the society is liable to pay Rs.1,00,000 per annum as maintenance charges. Mr. Suyash buys the property from Mr. Kailash at an agreed consideration. After few months of contract the secretary of the society called up Mr. Suyash and demanded maintenance charges to which Mr. Suyash refused to pay on the ground that he never contract with the society for the payment of such charges.

Conclusion: Here, the payment of annual maintenance charges is covenant with the property purchased by Mr. Suyash and thus, liable to pay it though he had not contracted with the society for its payment. Therefore, the society can sue Mr. Suyash if he fails to pay the maintenance charges annually though they were not the contracting parties i.e. stranger to the contract.

105. Mr. Rakesh is a clerk in Mumbai Municipal corporation

He went into a shop and was behaving in a manner to make an impression that he is member of Royal Family of Jodhpur

The shopkeeper allowed Rakesh to buy Gold rings without cash payment

Afterwards, before the delivery of ring, the shopkeeper came to know about the truth of Mr. Rakesh

The shopkeeper refused to deliver the ring

Examine validity of contract between Mr. Rakesh and The shopkeeper

Ans:- **Provision:** As per the provisions of section 20 of the Indian Contract Act, 1872, mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral. Bilateral mistake is when both the parties to a contract are under a mistake. Unilateral mistake is when only one party to the contract is under a mistake. A unilateral mistake is generally not allowed as a defense in avoiding a contract. But, in certain cases, the consent is given by the party under an error or mistake which is so fundamental as goes to the root of the agreement. In such cases the agreement is void. When there is mistake as to the identity of the person contracted with, the contract is void.

Facts of the case: In the given case, Mr. Rakesh, clerk in Mumbai Municipal corporation, went into a jewelers shop and was behaving in the manner to make an impression that he is member of Royal Family of Jodhpur. Thus, the shopkeeper allowed Mr.Rakesh to buy gold ring without cash

payment. Later on, before the delivery of the ring, the shopkeeper came to know about the truth of Mr. Rakesh and he refused to deliver the ring.

Conclusion: Here, there is a unilateral mistake on the part of shopkeeper as to the identity of Mr. Rakesh that he does not belong to the Royal Jodhpur Family. Generally, the contracts with unilateral mistake are valid, mistake as to the identity of the person contracted with is an exception to it which makes the contract void. Thus, the above contract is void and cannot be enforced.

106. Mr. Mohit sold his second hand car to the dealer of second hand cars

As per the terms of the contract Mr. Mohit was supposed to give delivery of the car after one week and the price has to be paid immediately

Before the expiry of one week the car met with an accident and was damaged badly

determine enforceability of the contract of sale of the car

Ans:- **Provision:** According to section 56 of the Indian Contract Act, 1872, when performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void and the parties are discharged from further performance of the contract. Such impossibility is called the subsequent or supervening. It is also called the post- contractual impossibility. Further, when the subject matter of a contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged.

Facts of the case: In the given case, Mr. Mohit sold his second hand car to the dealer of second hand cars, where, as per the terms of the contract, Mr. Mohit was supposed to give delivery of the car after one week and the price has to be paid immediately. But, before the expiry of the period of one week the car was badly damaged in an accident.

Conclusion: Here, the car has been damaged which was the subject matter of the contract which resulted into the supervening impossibility. Thus, the contract between Mr. Mohit and the dealer of second hand car has become void and parties are discharged.

107. A newspaper advertisement inviting applications for the post of an accounts manager is in the nature of _____ and any response from anybody to such advertisement would result into ___

Ans:- **Provision:** According to section 2(a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Offer is different from mere statement of intension, an invitation to offer, a mere communication of offer, casual equity, prospectus and advertisement. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce

offers and precedes a definite offer, i.e. offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.

Conclusion: A newspaper advertisement inviting applications for the post of an accounts manager is in the nature of **invitation to offer** and any response from anybody to such advertisement would result into **offer**.

108. Rahul asked Ms. Puja, will you marry Me?

Puja did not reply anything for one week

After a week Puja replied with Yes, but then Rahul refused

Is Rahul entitled to reject Puja's Yes?

Is there any contract between Puja and Rahul?

Ans:- **Provision:** According to section 2(a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Further, section 2(b) defines acceptance as when the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise. Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses. What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

Facts of the case: In the given case, Rahul asked Ms. Puja that whether she will marry him or not. But, Ms. Puja didn't reply anything for about one week. After a week, Ms. Puja replied with Yes, but then Mr. Rahul refused her.

Conclusion: Here, Mr. Rahul's proposal for marriage to Ms. Puja was an offer made to her. Ms. Puja's affirmative reply was an acceptance to that offer. As the reasonable time for acceptance of offer differs from case to case, it would be deemed that Ms. Puja has accepted the proposal within reasonable time and thus, there is a valid contract of marriage between them. Hence, Mr. Rahul is not entitled to reject Ms. Puja's acceptance and has to be bound by the contract.

109. There was a newspaper advertisement which offered a reward of Rs.10,000 to anyone who finds and returns Tushar's lost suitcase which contained important documents

This Advertisement is in the nature of

Provision: According to section 2(a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Offers are classified into

different types. One of the types is general offer. General offer is an offer made to the public at large and hence anyone can accept and do the desired act **(Carlill v. Carbolic Smoke Ball Co.)**. 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.

Facts of the case: In the given case, the advertisement was displayed in the newspaper which offered a reward of Rs. 10,000 to anyone who finds and returns Tushar's lost suitcase which contained important documents.

Conclusion: Here, the advertisement given in newspaper by Tushar for finding his lost suitcase is in the nature of public/ general offer. Thus, anyone with the knowledge of the offer can accept it and Tushar will be bound by it.

110. A customer went into a shop and asked for pure cotton clothes for his one year old kid

the shopkeeper showed him 3-4 different dresses and his chooses one of the dress

later on, it turns out to be not of the size of one-year kid but suitable for 3-6 months kid only

the customer wants to get his money back and the dress returned back

can he return it?

Ans:- **Provision:** As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware". According to section 16 of the Sale of Goods Act, 1930, subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, but where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

Facts of the case: In the given case, a customer went to a shop and asked for pure cotton clothes for his one year old kid. Accordingly, a shopkeeper showed him 3-4 different dresses and he chooses on of them. Later on it turns out to be unfit to one year old kid as it was suitable for 3-6 months kid only. Thus, customer wants to return the clothes.

Conclusion: Here, the rule of caveat emptor will not apply in this case, as the customer has told his purpose and description for buying the clothes and also he relied on the shopkeeper to provide the

suitable clothes for one year old kid. But, the shopkeeper supplied different clothes. Thus, the buyer can avoid the contract as there is breach of implied condition.

111. M/s Trade fair and company is a timber merchant

It had received order from Indian railway for supply of timber to be used as railway sleepers

M/s Trade fair supplies the timber as per order but later on it was discovered that the timber was unsuitable for the purpose of railway sleepers

can the goods be rejected, and contract avoided?

Ans:- **Provision:** As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware". According to section 16 of the Sale of Goods Act, 1930, subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, but where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

Facts of the case: in the given case, M/s Trade Fair and company is a timer merchant, which received order from Indian railway for supply of timber to be used as railway sleepers. M/s Trade fair supplied the timber as per order but later on it was discovered that the timber supplied was unsuitable for the purpose of railway sleepers.

Conclusion: Here, the rule of caveat emptor would not apply as the Indian railways have communicated the purpose for which the timber is purchased to M/s Trade Fair and company and relied on them for supplying the same quality of goods which means there was an implied condition as to supply of same quality timber. But, M/s Trade Fair and company supplied different timber and thus, there is breach of implied condition as to quality of timber and Indian railways can reject the goods and can avoid the contract.

112. Mr. Rahul sold his second hand car to Mr. Tushar saying that the car is in good condition, later on it was found that the car was not in a working condition

Mr. Rahul offered to pay all the expenses for repairing of the car and asked Tushar to get the car repaired to which Tushar also agreed

After repairing the car again showed some faults and Tushar has now requested Rahul to get back the car and give back his money

Can Tushar legally avoid the contract?

Ans:- **Provision:** According to the provisions of section 12 of the Sale of Goods Act, 1930, a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. As per sub section 2, 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, whereas, as per sub section 3, 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. Further, according to section 13, where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

Facts of the case: In the given case, Mr. Rahul sold his second hand car to Mr. Tushar saying that the car is in good condition, later on it was found that the car was not in a working condition. Thus, Mr. Rahul offered to pay all the expenses for repairing of the car and asked Mr. Tushar to get the car repaired to which he agreed. But after repairing the car again showed some faults and Mr. Tushar asked Mr. Rahul to get his car back and return the money.

Conclusion: Here, working of the car was an essential condition for purchasing the car, but since it was not in a working condition, there is breach of condition on the basis of which Mr. Tushar had a right to avoid the contract. But, Mr. Tushar agreed with Mr. Rahul to get the car repaired and expenses of repairing car would be paid by Mr. Rahul, which means Mr. Tushar has agreed to treat breach of condition as breach of warranty, and thus, waived his right to repudiate the contract and rather accepted to claim damages. Hence, Mr. Tushar cannot legally avoid the contract.

113. Mr. Rahul an Indian citizen working in Dubai was stranded in Dubai as he had no money to come back to India

Mr. Salman who is Rahul's friend in Dubai, made tickets from Dubai to Mumbai for Rahul and His wife from his own money and gave to Rahul

Rahul came back to India and immediately made a phone call to Salman thanking him for the help and made a promise that within few days he will refund the amount.

Is Rahul bound by any contract to repay the amount to Salman and if yes as per which provision of law

Ans:- **Provision:** According to section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration may be past, present or future. The general rule is that an agreement made without consideration is void. But one of the exceptions to

it says a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, provided that the services should have been rendered voluntarily, the services must have been rendered for the promisor, the promisor must be in existence at the time when services were rendered and the promisor must have intended to compensate the promisee

Facts of the case: In the given case, Mr. Rahul, an Indian citizen working in Dubai, was stranded in Dubai as he had no money to come back to India. Thus, Mr. Salman, Rahul's friend in Dubai, booked tickets voluntarily from Dubai to Mumbai for Rahul and his wife out his pocket and gave it to Mr. Rahul. Mr. Rahul after reaching India made a phone call and thanked Mr. Salman for helping him and promised to refund the amount of tickets within few days.

Conclusion: Here, Mr. Salman had given ticket to Mr. Rahul is an voluntary act and Mr. Rahul's promise to compensate for the tickets to Mr. Salman is enforceable. Therefore, Mr. Rahul is bound to repay the amount to Mr. Salman.

114. Mr. Rahul sent a message to his uncle asking him to sell his two-wheeler to Rahul for Rs.10,000

His uncle immediately called up his agent and asked him not to sell that bike to anyone as that he has to sell to his nephew Rahul (even though uncle did not communicate anything to Rahul)

The agent by mistake sold the bike to someone

Was there an agreement between Rahul and his uncle for sale of bike?

Ans:- **Provision:** As per section 2(b) of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise. To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Then only it can materialize into a contract.

Facts of the case: In the given case, Mr. Rahul sent message to his uncle asking him to sell his two-wheeler for Rs. 10,000. His uncle immediately called up his agent and asked him not to sell that bike to anyone as he has to sell it to his nephew Rahul, even though uncle never communicated his acceptance to Mr. Rahul. The agent by mistake sold the bike to someone.

Conclusion: Here, there does not exists a valid contract between Mr. Rahul and his uncle, as uncle has not communicated his acceptance to Mr. Rahul that he is ready to sell his bike for Rs. 10,000.

115. Mr. Mohit booked a ticket for a movie and on the back of ticket there was a printed condition if there is electricity failure and due to that any show is cancelled then the cinema hall is not liable for the loss to the customer

On that day there was electricity failure and the cinema show was off in between

Mohit wants to claim refund of his money

Is Mohit entitled to refund of his money?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, parties to the contract are not liable for special conditions printed on ticket, etc., if the ticket is so printed, or delivered to him in such a state, are not to give reasonable notice on the face. Also, these terms should be presented in such a manner that a reasonable man can become aware of them before he enters into contract. Ordinarily, the acceptance of a document containing the contract implies acceptance of all the terms contained in the contract, but it has certain exceptions. One of the exceptions is, where the terms and conditions of the contract are so unreasonable and will not be applicable for the contract.Further, when a contract becomes void due to supervening impossibility, the rule of restitution applies and any damages caused to the injured party need to be restored.

Facts of the case: In the given case, Mr. Mohit booked ticket for a movie which contained condition printed on the back of the ticket that if any show is cancelled due to electricity failure, then the cinema hall would not be responsible for the loss caused to the customer. On that day there was electricity failure and the cinema show was off in between. That is why; Mr. Mohit wants to claim refund of his money.

Conclusion: Here, though the conditions printed on the back of the ticket were so printed that Mr. Mohit, being a reasonable man, became aware of them, but the condition stating not to refund the money of ticket due to non-performance of the contract is unreasonable. Also, the contract has become void; hence, the rule of restitution would apply. Therefore, Mr. Mohit is entitled to get the refund of money of his ticket.

116. Mr. Hitesh bought certain goods from Ms. Sonal

Hitesh requested Sonal to take money for the goods from Mr. Jay

Sonal asked Jay if he will pay for the goods bought by Hitesh, to which Jay also agreed

But afterwards Jay refused on the ground that the money which Hitesh has deposited with him have been withdrawn by him and he has no money of Hitesh now

can Sonal recover money from Jay?

Provision: According to the provisions of the Indian Contract Act, 1872, it is general rule of law that only parties to a contract may sue and be sued on a contract. This rule is known as the “doctrine of privity of contract. Thus, there can be a stranger to a consideration but not a stranger to a contract. But, this rule is subject to certain exceptions. One of the exceptions is, where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party by acknowledgement or estoppels.

Facts of the case: In the given case, Mr. Hitesh bought goods from Ms. Sonal. Mr. Hitesh requested Ms. Sonal to take money for goods sold from Mr. Jay and the same was agreed by Mr. Jay. Accordingly, Ms. Sonal asked for the money after supplying the goods, but Mr. Jay refused on the ground that the money which Mr. Hitesh has deposited with him has been withdrawn by him and he has no money of Mr. Hitesh now.

Conclusion: Here, Mr. Jay agreed to pay on behalf of Mr. Hitesh for the goods purchased from Ms. Sonal which means he acknowledged Ms. Sonal by his act that he is acting as agent of Mr. Hitesh. Thus, rule of estoppel would apply and Mr. Jay cannot refuse his liability and Ms. Sonal can held Mr. Jay liable for claiming money for the goods sold to Mr. Hitesh.

117. Mahesh asked Ankit if he can use Ankit's house which is otherwise vacant

Ankit agreed on the condition that Mahesh should pay some charges to Anmol (who is Ankit's brother)

Ankit agreed for it and signed an agreement under which he promised to pay Rs.5,000 to Anmol till the time he is in possession of Ankit's house

Later on Mahesh refuses to pay the amount on the ground that he is not getting any consideration from Anmol to whom he has made promise to pay money

Can Anmol recover money from Mahesh?

Ans:- **Provision:** According to section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration may move from promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract **[Chinnayya vs. Ramayya (1882)].**

Facts of the case: In the given case, Mahesh asked Ankit to use his vacant house to which Ankit agreed on the condition that Mahesh should pay some charges to Amol, who is brother of Ankit. Both of they agreed and an agreement was signed under which Mahesh promised to pay Rs. 5,000 to Anmol till the time he is in possession of Ankit's house. Later, Mahesh refuses to pay the amount on the ground that he is not getting any consideration from Anmol to whom he has made promise to pay money.

Conclusion: Here, as consideration may move from anyone, though Mahesh is not getting anything from Anmol, he is getting consideration from Ankit in the form of using his house. Therefore, though Anmol is not a party to the contract, he can recover money from Mahesh.

118. Mr. Rahul promised to pay to the priest of a Temple that he shall pay Rs.2,000 every month to the priest of take care of the temple

The priest took care of the temple but Rahul failed to pay any amount

can the Priest recover the amount from Rahul?

What is the consideration accruing to Rahul in this case?

Ans:- **Provision:** According to section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. As per the English law, a valuable consideration in the sense of law may consist either in some right, interest, profit or benefit accruing to one party (i.e. promisor) or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (i.e., the promisee) **(Misa v. Currie)**. It means consideration must result in a benefit to the promisor or loss to the promisee or both.

Facts of the case: In the given case, Mr. Rahul promised to pay to the priest of the temple that he shall pay Rs.2,000 every month to the priest to take care of temple. The priest took care of the temple but Mr. Rahul failed to pay any amount.

Conclusion: Here, the priest has devoted his time for taking care of the temple which is a good consideration for a contract accruing to Mr. Rahul as consideration is not always the benefit or profit, it may be a loss. Therefore, the priest can recover the amount agreed from Mr. Rahul.

119. Mr. Murali who is a farmer owes certain amount of money to a moneylender which he

is unable to repay

He further borrowed a sum of money from that moneylender at double the normal rate of interest.

Can this contract be avoided by the farmer? And if yes, on what ground?

Provision: As per section 16 of the Indian Contract Act, 1872, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other. A person is deemed to be in position to dominate the will of another-

(a) Where he holds a real or apparent authority over the other; or

(b) Where he stands in a fiduciary relationship to the other; or

(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

Facts of the case: In the given case, Mr. Murali, a farmer, owes certain amount of money to a moneylender which he is unable to repay. He further borrowed a sum of money from that moneylender at double the normal rate of interest.

Conclusion: Here, the moneylender is in position to dominate the will of Mr. Murali as he is unable to pay the money to him. Also, the rate of interest charged is double the normal rate of interest which means the moneylender has taken the unfair advantage of position of Mr. Murali. Therefore, the contract is induced by undue influence and can be avoided by Mr. Murali.

120. Pappu and Sonu are two friends (out of which Pappu is minor and Sonu is major)

Pappu and Sonu bought a bike for their friend Golu and promised to pay the price after one month

Golu wants to recover the amount from Pappu and Sonu who have jointly promised to pay the amount

can Golu recover the amount?

Ans:- **Provision:** 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 who is of sound mind and is not disqualified from contracting by any law to which he is subject. A person who has not completed 18 years of his age is said to be minor. A minor is not competent to contract and any agreement with or by a minor is void- ab-initio i.e. void from the very beginning. Minor does not incurs any personal liability as he is incompetent for contracting debts.

Facts of the case: In the given case, Pappu and Sonu, two friends, out of which Pappu is minor and Sonu is major, bought bike for their friend Golu and promised to pay the price after one month. Golu wants to recover the amount from Pappu and Sonu who jointly promised to pay the amount.

Conclusion: Here, Golu can recover amount of bike from Sonu as he is a major and contract with major person are valid. But, Golu cannot recover anything from Pappu as he is minor and not liable.

121. A minor has lied about his age and has falsely represented himself as major and borrowed a sum of money from a moneylender

Is the minor or his estate liable to pay the amount so borrowed

Ans:- **Provision:** As per 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 who is of sound mind and is not disqualified from contracting by any law to which he is subject. A person who has not completed 18 years of his age is said to be minor. A minor is not competent to contract and any agreement with or by a minor is void-ab-initio i.e. void from the very beginning. **(Mohori Bibi vs. Dharmo Das Ghose).** Minor does not carry any personal property and his property is liable only for the necessaries supplied to him.

Facts of the case: In the given case, a minor lied about his age and has falsely represented himself as major and borrowed a sum of money from a moneylender.

Conclusion: Here, the contract between minor and the moneylender would be void-ab-initio and thus, will not be enforceable in the court of law. Hence, neither the minor nor his property would be liable.

122. A public trust was created for the development of students or backward class

As per the trust deed all the incomes of the trust were to be spent on education of poor students belonging to backward class

After the death of the settler, trustees of that trust started misusing the funds for other purposes also

In this case who can sue the trustees for their breach of trust deed

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, it is general rule of law that only parties to a contract may sue and be sued on a contract. This rule is known as the "doctrine of privity of contract. Thus, there can be a stranger to a consideration but not a stranger to a contract. But, this rule is subject to certain exceptions. One of the exceptions is, in case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

Facts of the case: In the given case, a public trust was created for the development of the student of backward class. As per the trust deed, all the incomes of the trust were to be spent on education of poor students belonging to backward class. After the death of the settler, trustees of that trust started misusing the funds for other purposes also.

Conclusion: Here, the above case will fall within the exception that backward students can enforce their right under the trust. Therefore, students of the backward class, for whose benefit the trust was utilizing its funds, can sue the trustees for their breach of the trust deed even though they are not a party to a contract.

123. Rahul promised to his wife Anita that he will pay her Rs.5,000 every month as monthly allowance to run his family

is the agreement enforceable in court of law?

Ans:- **Provision:** As per section 2(a) of the Indian Contract Act, 1872, every promise and every set of promises, forming the consideration for each other is called as agreement. Further, section 2(h) defines contract as an agreement enforceable by law is called as contract. Section 10 of the act provides certain elements which are essential to create a valid contract. One of the elements is that parties must intend to create legal obligation. There must be an intention on the part of the parties to create legal relationship between them. Social or domestic types of agreements are not enforceable in court of law and hence they do not result into contracts **(Balfour v. Balfour)**.

Facts of the case: In the given case, Rahul promised his wife Anita that he will pay her Rs. 5,000 every month as monthly allowance to run his family.

Conclusion: Here, the agreement between Rahul and his wife Anita is social in nature as they were never intended to create legal relationship. Thus, this agreement cannot be enforced in the court of law as it is social in nature.

124. Mohit sold his land to his brother for Rs.500,000 and promised to pay the price in one years' time This is a

Ans:- **Provision:** Section 10 of the Indian Contract Act, 1872, provides certain elements which are essential to create a valid contract. One of the elements is that parties must intend to create legal obligations. There must be an intention on the part of the parties to create legal relationship between them. Social or domestic types of agreements are not enforceable in court of law and hence they do not result into contracts. Nearness of relationship does not make a contract as of social nature.

Facts of the case: In the given case, Mohit sold his land to his brother for Rs. 5,00,000 and promised to pay the price in one year.

Conclusion: Here, the contract for sale of land between Mohit and his brother is valid and are intended to create legal relationship. Hence, it is a legal agreement.

125. Mr. Pratik was hired to do certain work by Mr. Rahul

As per the contract Rahul would pay reasonable remuneration to Pratik

Examine validity or otherwise of the agreement

Ans:- **Provision:** According to section 2(a) of the Indian Contract Act, 1872, every promise and every set of promises, forming the consideration for each other is called as agreement. Further, section 2(h) defines contract as an agreement enforceable by law is called as contract. Section 10 of the act provides certain elements which are essential to create a valid contract. One of the elements is that agreement must be certain not vague or indefinite.

Facts of the case: In the given case, Mr. Rahul hired Mr. Pratik to do certain work. As per the contract Rahul agreed to pay reasonable remuneration to Pratik.

Conclusion: Here, Mr. Rahul's promise to pay the reasonable remuneration is not valid as the term "reasonable" does not have any certain meaning. Thus, the contract between Mr. Rahul and Mr. Pratik is invalid.

126. A farmer promised to supply vegetables to a family @ Rs.50 per kilogram for a period of 1 year provided the family buys at least 5 kg every week

after supplying the vegetables for few weeks the farmer refused to supply the vegetables on the ground that he is not able to earn a reasonable profit from the vegetables supply and therefore he is not in a condition to run the business

this is

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, the parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise. Actual breach may be committed at the time when the performance of contract is due or during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act. Further section 73 states that on the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach.

Facts of the case: In the given case, a farmer promised to supply vegetables to a family @Rs. 50 per kg for a period of one year provided a family buys at least 5kgs every week. After supplying the vegetables for few weeks the farmer refused to supply the vegetables on the ground of reasonability of earning profit from it and thus, he is not in condition to run the business.

Conclusion: Here, there is breach of contract by the farmer as it is possible for the farmer to supply the vegetables and due to this contract has become void. Thus, that family can claim damages from the farmer for not further supplying the vegetables to them.

127. Rajesh promised to supply certain goods to Tushar @ 125/ unit

After the contract market rate of that commodity goes up to Rs.160 / unit

Is Mr. Rajesh under obligation to supply the goods and at what rate?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, a contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. Ordinarily when a person undertakes to do something, he must do it unless its performance becomes absolutely impossible. Thus, a contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at higher price, or there is sudden depreciation of currency i.e. commercial impossibility.

Facts of the case: In the given case, Rajesh promised to supply certain goods to Tushar @Rs. 125/unit. After the contract market rate of that commodity goes up to Rs. 160/unit.

Conclusion: Here, Rajesh cannot deny to supply the goods @ Rs. 125/unit as agreed on the ground that the market price of that commodity has gone up To Rs. 160/unit and it would result into a loss to him of Rs. 35/ unit. Impossibility of performance would not be given excuse on the ground of commercial impossibility. Thus, Rajesh is liable to supply the goods @ Rs. 125/unit as per the contract

132. A promised to colour C's House if C does repairing to B's house, to which C also agreed.

In this case is there any consideration accruing to A?

Ans:- **Provision:** Section 2(d) of the Indian Contract Act, 1872 defines consideration as "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. It is a term used in the sense of *quid pro quo,* i.e., 'something in return'. Consideration must move at the desire of promisor. Further, a valuable consideration in the sense of law may consist either in some right, interest, profit or benefit accruing to one party (i.e. promisor) or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (i.e., the promisee).

Facts of the case: In the given case, Mr. A promised to color Mr. C's house if Mr. C repairs the house of Mr. B. According Mr. C agreed to it.

Conclusion: Here, Mr. C agreed to repair the house of Mr. B ate the desire of Mr. A. Hence, it is a good consideration accruing to Mr. A in return of coloring Mr. C's house as it was his desire to get Mr. B's house repaired.

129. P is married to C, both of them makes a joint promise to pay Rs.1,00,000 to X from whom they have bought a plot of land

after few months P left India and settled in Dubai

C is working with a multinational company and is earning good salary

X wants to recover entire amount from C

how much amount C is liable to pay under the contract?

Ans:- **Provision:** According to section 42 of the Indian Contract Act, 1872, when two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly. Further, section 43 states that when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise which means liability of joint promisors are joint and several. But, if one of the joint promisors is made to perform the whole contract, he can call for a contribution from others. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Facts of the case: In the given case, Mr. P and Ms. C, married couple, jointly promised to pay Rs. 1,00,000 to Mr.X from whom they have bought a plot of land. After few months Mr. P left India and settled in Dubai. Ms. C is working with a multinational company and is earning good salary. Thus, Mr. X wants to recover entire amount from Mr. C.

Conclusion: Here, Mr. P and Ms. C are joint promisors hence their liability will be joint and several. Thus, Mr. X can recover entire amount of Rs. 1,00,000 from Ms. C and she would be liable to pay the said amount. Also, Mr.C can recover the proportionate amount from Mr. P and if Mr. P fails to pay his share to Ms. C, she will have to bear the loss.

130. Rakesh wrote a mail to Hitesh asking him he wants to buy Rakesh's old house

Hitesh agreed to buy the house and price was fixed at Rs.10 Lacs

Hitesh failed to pay the amount within agreed time and Rakesh then sold the house to someone else for Rs.12 Lacs

Rakesh wants to recover damages from Hitesh for his failure to fulfil the contractual obligation

can Rakesh recover damages from Hitesh?

Ans:- **Provision:** As per section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The right to recover damages is provided with a view so as to put the injured party in favorable position and mitigate the loss accrued to it.

Facts of the case: In the given case, Rakesh asked Hitesh through mail if he want to buy his old house. Accordingly Hitesh agreed to buy the house and the price was fixed at Rs. 10 Lacs. But Hitesh failed to pay the amount within agreed time and thus, Rakesh sold the house to some other person at Rs. 12 Lacs. Now, Rakesh want to recover the damages from Hitesh for his failure to fulfill the contract.

Conclusion: Here, Rakesh does not incur any loss due Hitesh's failure to buy the house. In fact, he earned a Rs. 2 Lacs extra than that of the price agreed to be paid for the house by Hitesh. Hence, Rakesh cannot recover anything from Hitesh in the name of damages as he neither incurred any loss due to breach of contract.

131. A and B are friends and there shops are nearby

One day A's shop got fire and B saved A's goods from the fire by spraying fire extinguishers of his own shop

later, A promised to pay Rs.5,000 to B which is nothing but the cost of fire extinguishers which B used of his own shop

this example is of _____ and in this case promise of A is legally _____

Ans:- **Provision:** According to section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Consideration may be past, present or future. The general rule is that an agreement made without consideration is void. But one of the exceptions to it says a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding and legally enforceable, provided that the services should have been rendered voluntarily, the services must have been rendered for the promisor, the promisor must be in existence at the time when services were rendered and the promisor must have intended to compensate the promise.

Facts of the case: In the given case, Mr. A and Mr. B are friends and there shops are nearby. One day Mr. A's shop burnt by fire. Mr. B saved Mr. A's goods from the fire by spraying the fire extinguishers of his own shop voluntarily. Later on, Mr. A promise to pay Rs. 5,000 to Mr. B which is nothing but the cost of fire extinguishers used by Mr. B.

Conclusion: In the above case, Mr. B voluntarily saved the goods of Mr. A's shop from fire without any prior request of Mr. A. But, Mr. A later agreed to pay the amount for Mr. B's act which would be termed as past consideration and Mr. A would be legally bound to pay the agreed amount of Rs. 5,000 to Mr. B as a compensation of the fire extinguishers used by him.

132. Sohan promised not to practice as chartered Accountant as long as he is in employment with M/s Chotelal and Co. Which is a CA Firm

is the agreement legally valid?

Ans:- **Provision:** As per section 27 of the Indian Contract Act, 1872, 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 some exceptions, such as an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade. If a restraint is intended to protect an employer against an employee making use of trade secrets learned by him in the course of his employment, the restraint is valid, provided it is not for any other purpose also.

Facts of the case: In the given case, Mr. Sohan promised not to practice as Chartered Accountant as long as he is in employment with M/s Chotelal and Co., a CA firm.

Conclusion: Here, Mr. Sohan's promise of not to practice in any other firm during his employment, falls within the exception to agreements in restraint of trade, as he may compete with the firm M/s Chotelal and Co. and may use their business tricks for his own firm/other employment place. Thus, the above agreement is legally valid.

133. Mr. Manoj is a Doctor and he promised not to practice in the field in which his friend Mr. Anuj is practicing, this agreement among them is

Ans:- **Provision:** As per section 27 of the Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void, provided does not falls within exceptions to it.

Facts of the case: In the given case, Mr. Manoj, who is a doctor, promised not to practice in the field in which his friend Mr. Anuj is practicing.

Conclusion: Here, the above agreement is in restraint of trade because Mr. Anuj is restraining Mr. Manoj from practicing into same field to avoid competition which is not valid. Hence, the agreement among them is void.

134. Mr. Pravin promised not to marry during his lifetime in consideration of Mr. Anil's promise to pay him monthly allowance of Rs.5,000

this agreement is

Ans:- **Provision:** According to section 26 of the Indian Contract Act, 1872, every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding and considered as void agreement.

Facts of the case: In the given case, Mr. Pravin promised not marry during his lifetime in consideration of Mr. Anil's promise to pay him monthly allowance of Rs, 5,000.

Conclusion: The above agreement between Mr. Pravin and Mr. Anil is in restraint of marriage and not binding on any of the parties to the contract. Hence, this agreement is void and cannot be enforced.

135. X and Y have some dispute regarding a plot of land which was inherited by them from their cousin uncle

Z who is friend of X promised to pay him whatever money he needs to fight suit against Y in relation to the dispute

Z wants to take revenge on Y on some other ground

This is a case of ___ and here contract between X and Z through which Z is giving money to X to fight a suit is _____

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, maintenance is an agreement in which a person promises to maintain suit in which he has no interest, while, champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action. The agreement for supplying funds by way of Maintenance or Champerty is valid unless-

a) It is unreasonable so as to be unjust to other party or

b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the Bonafede object of assisting a claim believed to be just.

Under the English law both these agreements are void. The Indian Law, however, does not make them absolutely void. If the object of a contract is just to assist the other party in making a reasonable claim arising out of a contract and then to have a fair share in the profit, the contract is valid.

Facts of the case: In the given case, there was a dispute between Mr. X and Mr. Y regarding a plot of land inherited to them by their cousin uncle. Since Mr. Z, friend of Mr. X, wants to take revenge on Mr. Y on some other ground, he promised to pay Mr. X all the money that he will need to fight suit against Mr. Y in relation to the dispute.

Conclusion: Here, the above contract between Mr. X and Mr. Z is of maintenance and champerty. But, this contract is void on the ground that object of Mr. Z behind helping Mr. X to fight the suit against Mr. Y was unjust as he wants to take his revenge.

136. which of the following is not wagering agreement.

Ans:- **Provision:** According to provisions of the Indian Contract Act, 1872, a wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening. The essence of gambling and wagering is that one party is to win and the other to lose upon a future event. Also, neither party should have any interest in the happening of the event other than the sum or stake he will win or lose. Thus, the agreement is not a wager if the party to whom money is promised on the occurrence of an event, has an interest in its non-occurrence. Wagering agreements have been expressly declared to be void in India. Speculative transactions apparently look like wager but there is difference between wager and speculation. Speculative transactions are not a wagering agreements if their real intension is to buy/sell the shares for security purpose and not for speculating the prices of shares. Further, the Supreme court of India in B. R. Enterprises Vs. State of UP held that even the state

sponsored lotteries have the same element of chance with no skill involved in it and it comes under wagering contracts as the very nature of agreement has not changed and thus, be void.

Conclusion: Thus, state run lottery and speculative transactions on share market where intension is to speculate prices are wagering agreements.

137. Which of the following is offer

Advertisement for giving reward to a person who returns lost suit case.

Ans:- **Provision:** According to section 2(a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Offer is different from mere statement of intension, an invitation to offer, a mere communication of information, prospectus and advertisement. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Thus where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence the only thing that is required is the willingness of the offeree to abide by the terms of offer.

Conclusion: Here, advertisement for giving reward to a person who returns the lost suitcase is an offer, while display of goods, issue of prospectus by company for issue of shares and matrimonial ads in shadi.com are invitation to offer as its intension is to invite offers from other people.

138. X promises to pay a time barred debts to Y

later, X didn't pay the amount

can the time barred debt in this be recovered legally

Ans:- **Provision:** As per section 2(d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Further section 25 of the act says that it is general rule that an agreement made without consideration is void. However, the Indian Contract Act contains certain exceptions to this rule. One of the exception is promise to pay time barred debt which is valid though without consideration. Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration.

Facts of the case: In the given case, Mr. X promises Mr. Y to pay him the time barred debt, but later on Mr. X failed to pay the amount.

Conclusion: The promise to pay time barred debt is a new agreement which would be valid provided the agreement is made in writing. Here, promise made by Mr. X is oral promise and not in writing. Hence, Mr. Y cannot legally recover the amount from Mr. X and agreement cannot be enforced.

139. X and Y jointly owns a particular asset which was bought by them 2 years before

X was in possession of the asset for last few months

X sold the asset without asking Y to someone

Now Y is objecting to the sale

Will the buyer get title to the goods?

Ans:- **Provision:** According to section 27 of the Sale of Goods Act, 1930, subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. But there are certain exceptions to this rule where a non-owner can convey better title to the bona fide purchaser of goods for value. Further section 28 provides the exception as sale by one of the joint owners of the goods. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Facts of the case: In the given case, Mr. and Mr. Y were the joint owners of a particular asset bought by them 2 years before. Mr. X was in possession of the asset for last few months and then sold the asset to someone without asking to Mr. Y. Now, Mr. Y objected the sale of asset.

Conclusion: Here, being an exception to rule as mentioned aforesaid, Mr. X has the authority to sale the asset held jointly with Mr. Y deeming that he was in possession of the asset with the consent of Mr. Y and buyer has bought the asset in good faith. Therefore, buyer will be conveyed a better title of asset by Mr. X and Mr. Y can't raise any objection on the same.

140. Ram has sold certain goods to Kunal but he has not been paid price of the goods even after the price falls due

Ram informed Kunal that he doesn't pay the price within a week he will sell off the goods to someone else

Ram waited for 2 weeks but Kunal didn't pay the price

finally, Ram sold the goods and realised price equal to 90% of contract price

is the sale of goods by Ram valid and can ram recover the loss from Kunal?

Ans:- **Provision:** According to section 45(1) 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 and the seller had an immediate right of action for the price.

b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

The unpaid seller has several rights to exercise. One of the rights is right to re-sale. As per section 54 of the act, the right of resale is a very valuable right given to an unpaid seller. He can exercise the right to re-sell the goods, where the goods are of perishable nature there is no need to inform the intention of resale to buyer. Where he gives notice to the buyer of his intention to re-sell the goods and even 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. Also, on the resale of the goods, the seller is entitled to recover the difference between the contract price and resale price, from the original buyer, as damages or retain the profit if the resale price is higher than the contract price.

Facts of the case: In the given case, Mr. Ram sold goods to Mr. Kunal but he failed to pay price of the goods even after due date. Thus, Mr. Ram gave notice to Mr. Kunal stating that if he doesn't pay the price within a week he will sell off the goods to someone else. Mr. Ram waited for 2 weeks but still Mr. Kunal didn't pay the price. So, finally he sold the goods and realized about 90% of the contract price.

Conclusion: Here, Mr. Ram, being an unpaid seller, has the right to re-sale the goods. Thus, he gave a notice of his intension to Mr. Kunal to re-sale the goods along with a reasonable period after the notice. Therefore, the re-sale of goods made by Mr. Ram is valid. Also, in fact, he can recover the loss that he had suffered by selling the goods at lower price than that of the contracted price due to Mr. Kunal's failure to pay the amount for goods.

141. Mr. X and Mr. Y made a contract in which it was agreed that if either of the party fails to perform the contract the other party shall pay Rs.10,000 as damages from other party

Mr. X failed to perform and due to which Mr. Y suffered loss of Rs.50,000

How much damages Y can recover from Mr. X?

what would be your answer of the actual loss would have been only Rs.2,000?

(Answer in two parts, first case and second case)

Ans:- . **Provision:** As per the provisions of the Indian Contract Act, 1872, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages or a penalty. Indian law makes no

distinction between penalty and liquidated damages. Section 74 provides that if a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named. It entitles a person complaining of breach of contract to get reasonable compensation and does not entitle him to realise anything by way of penalty. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceeds the sum so fixed in the contract.

Facts of the case: In the given case, Mr. X and Mr. Y made a contract in which it was agreed that if either of the party fails to perform the contract the other party shall pay Rs. 10,000 as damages from other party. Mr. X failed to perform due to which Mr. Y incurred a loss of Rs. 50,000. In second case, Mr. Y suffered a loss of Rs. 2,000 due to failure of Mr. X to perform the contract.

Conclusion: Here, Mr. X is liable to pay the amount of actual loss suffered by Mr. Y but not exceeding the sum so agreed i.e. Rs. 10,000 in the form of liquidated damages. Hence, Mr. Y is entitled to recover only Rs. 10,000 for damages. Further, in second case, if the amount of loss suffered by Mr. Y had been Rs.2,000, then he would have been entitled to recover only Rs. 2,000 which is the actual loss suffered from Mr. X.

142. Mr. Anup agreed to supply 2 quintals of a particular material @ 5,000 per quintal to Mr. Sanjay

It was agreed that the material should be supplied in one weeks' time

on the very next day of agreement All the workers in Anup's factory went on a strike and his factory remained closed for 2 weeks

Mr. Anup could not offer the material on time and as a result Mr. Sanjay bought the material from market @ Rs.6,000 per quintal

Can Mr. Sanjay claim anything from Anup on account of loss to him?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, a contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. Ordinarily when a person undertakes to do something, he must do it unless its performance becomes absolutely impossible. Thus, a contract is not discharged merely because of strikes. Lockout and civil disturbances. Such events do not discharge a contract unless the parties have specially agreed in this regard at the time of formation of contract.

Facts of the case: In the given case, Mr. Anup agreed to supply 2 quintal of particular material to Mr. Sanjay @ Rs. 5,000 per quintal to be supplied within one week time. Next day of the agreement, all the

worker's in Mr. Anup's factory went on a strike and his factory remained closed for about 2 weeks due to which he failed to fulfill the order on time. Thus, Mr. Sanjay bought that material from market @ Rs. 6,000 per quintal.

Conclusion: Here, the contract does not become impossible due to strike of workers. So, Mr. Anup was not discharged from the contract and was under obligation to supply the material to Mr. Sanjay as impossibility of performance is not an excuse in this case. Also, Mr. Sanjay is entitled to claim the loss of Rs.1,000 per quintal suffered by him due to Mr. Anup's failure to supply the material on time since there was no specific term included in the contract in this regard.

143. Rahul promised to marry a girl (who is Rahul's schoolmate) on the belief that she is a chartered accountant

In fact she left her CA course in between and joined some other course

Rahul never asked the girl about her education nor did the girl ever told Rahul that she is CA

One week before Rahul came to know about the girl's educations and now he wants to avoid the contract

can Rahul avoid the contract?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral. When both the parties to a contract are under a mistake as to matter of fact essential to the contract, the agreement is void. When only one party to the contract is under a mistake regarding subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistake is brought about by the other party's fraud or misrepresentation.

Facts of the case: In the given case, Rahul promised to marry a girl, his schoolmate, on the belief that she is a Chartered Accountant. Where in fact, she left CA course in between and pursued some other course. Rahul never asked the girl about her profession nor did she ever tell him that she is a CA. One week before the marriage, Rahul came to know about the fact that she is not a CA and thus, now wants to avoid the contract.

Conclusion: Here, there is unilateral mistake on the part of Rahul as to fact that the girl he wants to marry is not a CA. Also, there is neither fraud nor misrepresentation made by that girl about her education. Therefore, the contract of marriage between Rahul and that girl is valid and cannot be avoided by Rahul.

144. A promise to pay Rs.100,000 to his younger brother for buying a bike on his next birthday.

Is this promise enforceable in the court of law?

would your answer be different if the promise were written and registered?

Ans:- **Provision:** As per section 2(h) of the Indian Contract Act, 1872, an agreement enforceable by law is contract. There are certain elements which are essential for a valid contract. One of the elements is that parties must intend to create legal obligation. There must be an intention on the part of the parties to create legal relationship between them. Social or domestic types of agreements are not enforceable in court of law and hence they do not result into contracts. Further, another essential element of the contract is consideration which means something in return. Generally, an agreement without consideration is void, except in certain cases as where a written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

Facts of the case: In the given case, Mr. A promised his younger brother to pay him Rs. 10,000 for buying a bike on his next birthday.

Conclusion: Here, the contract between Mr. A and his brother will not be enforceable as it is social in nature and both the parties never intended to create any legal obligation. Further, if the agreement is written and registered which means they are intending to create legal relationship then it would be binding in both the parties and Mr. A would be liable to pay his brother Rs. 10,000 for a bike.

145. An agreement by a dealer to supply goods in next week was not performed by him due to non-supply of goods to him by his supplier

this would be a case of ?

Ans:- **Provision:** According to the provisions of the Indian Contract Act, 1872, when one of the parties to the contract breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise. Impossibility of performance is not an excuse. Ordinarily when a person undertakes to do something, he must do it unless its performance becomes absolutely impossible. Thus, a contract is not discharged by the mere fact that it has become more difficult to perform due to some un-contemplated events or delays.

Facts of the case: In the given case, an agreement by a dealer to supply goods in next week was not performed by him due to non- supply of goods to him by his supplier.

Conclusion: Here, there is breach of contract by the dealer to supply goods to customer as the above circumstances are usual in the normal course of business. It does not discharge the parties from further performance on the ground of supervening impossibility.

146. Rahul and his wife have made a fixed deposit in a bank of Rs.500,000 in their joint name

after few days they get divorced and now they are not in talking terms

each one of them is making demand for money to the bank

whom should the bank make payment and how much?

Ans:- **Provision:** As per section 45 of Indian Contract act 1872, When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly. In other words, the rights of joint promisee's are Joint which can be claimed jointly but not severally.

Facts of the case: Rahul and Anita have made a fixed deposit in their joint name, which has resulted into a joint right available to them which can be claimed by them jointly. But due to their divorce they are making demand individually.

Conclusion: as the right of joint promisee's can be enforced jointly but not severally, so in this case Bank is liable to make payment only if the demand is made jointly by Rahul and Anita.

147. X wrote a letter to his creditor that he is shifting to Mumbai and now all his debts are assumed by his brother Y and his creditor can recover the money from Y.

the creditor wants to know can he deny to such act of X?

Ans:- **Provision:** Assignment of benefits arising out of a contract is allowed under law, but Obligations under a contract cannot be assigned. In other words a person can transfer any rights available to him to a third party without the consent of the other party to the contract but he cannot do the same when it comes to his duties arising from any contract.

Facts of the case: X who is indebted to Y has transferred his liability to a third party.

Conclusion: X's action is not justified as it amounts to transfer of obligations and hence the creditor has every right to deny to such transfer.

148. C wrote a letter to his bank that as his age has crossed 75, he wish to retire from his business and now onwards his business would be looked after by his nephew D and all his rights and obligations are now assigned by him to D. C owes Rs.20,000 to the bank, from whom should the bank demand money ?

Ans:- **Provision:** As per the provisions of the Indian Contract Act, 1872, when the benefits of a contract are succeeded to by process of law i.e. in case of death, insolvency, then both burden and benefits attaching to the contract, gets transferred to legal heir. Whereas, assignment means transfer of rights or benefits from one person to another. It means in the matter of assignment, however the

benefit of a contract can only be assigned but not the liabilities there under. This is becausewhen liability is assigned; a third party gets involved therein. It is effective against debtor only if notice is given to him.

Facts of the case: In the given case, Mr. C wrote a letter to his bank that he wish to retire from his business due to age crossed 75 and business would be looked after by his nephew Mr. D by assigning all his rights and obligation to Mr. D. Mr. C owes Rs. 20,000 to bank.

Conclusion: All the rights and liabilities can be transferred only in case of succession and succession happens only in case of death, insolvency, etc. of a person. While, in assignment, only rights can be transferred. Here, Mr.C is alive, so there is no succession, while, he has transferred both rights and obligations to Mr. D which means there is no assignment. Therefore, in above case, there is neither assignment nor succession and thus, all the rights and liabilities of the business lies with Mr. C. So, bank can demand Rs. 20,000 from Mr. C.

149. **Case 1**: Ram is a mechanic, one of his customer Sham delivered his car for repairing to Ram's garage. Ram asked one of his employees Bharat and asked him to repair the car

Case 2: Ram is a well know Orthopedic Surgeon, one of his patient Sham took Ram's appointment for consultancy, as Ram had to go for dinner, he asked one of his assistant Doctor Bharat to provide consultancy to Sham

Case 3: Ram is a very good guitarist, one Mr. Sham booked Ram's guitar show for his family function, as Ram was busy in some work on that day, he asked his assistant guitarist Bharat to perform in the function

In which of the above case performance by Bharat is valid and effective performance and it has the effect of relieving the promisor.

Ans:- **Provision:** According to section 37 of the Indian Contract Act, 1872, performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. Thus, it is the primary duty of each party to a contract to either perform offer to perform his promise which means performance can be actual or offer to perform. Further, section 40 of the act states that if there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself. Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

Facts of the case:

1) In the first case, Ram is a mechanic and one of the customers delivered his car to Ram's garage. Ram asked one of his employees Bharat to repair the car.

2) In the given case, Ram is a well-known orthopedic surgeon. Sham, patient, took Ram's appointment for consultancy. As Ram had to go for a dinner, he asked one of his assistant doctors Baharat to provide consultancy to Sham.

3) In the third case, Ram is a very good guitarist. Sham booked Ram's guitar show for his family function. As Ram was busy in some work on that day, he asked his assistant guitarist Baharat to perform in the function.

Conclusion:

1) Here, there is no personal consideration necessary for repairing the car as Baharat being employee in garage, would be skillful in repairing the car. Thus, in this case performance by Bharat as an agent of Ram is valid and effective and thus, Ram gets discharged from contract by Bharat's performance.

2) Here, Sham took appointment of Ram as he is a well-known doctor in that field and his intension was that consultancy should be done by Ram. Thus, the consultancy provided by Bharat is not a valid performance and does not discharge Ram from his obligation to provide consultancy to Sham.

3) As per the context of the above case, playing guitar involves personal skills and contracts involving exercise of personal skills should be performed by promisor himself. Therefore, guitar performance by Bharat is not valid and effective.

150. Mr. X has been working as a professional singer for last one decade and he usually charge Rs.5,000 per hour for his performance

One morning Mr. X died leaving behind crores of rupees in the form of cash, gold, shares etc to his successors i.e. his son and daughter

Mr. X's daughter is also very good singer

Mr. X had accepted several offers for singing performances before his death which remained unperformed and for which he already took all the consideration in advance

Mr. X's daughter being a good singer is ready and willing to perform in all those shows where her father has promised to perform

what is the duty of X's successors in such circumstance?

Ans:- Provision: As per the provisions of section 40 of the Indian Contract Act, 1872, a contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased

promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

Facts of the case: In the given case, Mr. X, working as a professional singer for last one decade and he usually charges Rs. 5,000 per hour. One day Mr. X died leaving behind crores of rupees in the form of cash, gold, shares, etc. to his successors i.e. his son and daughter. Mr. X had accepted several offers for his singing performance before his death and had also received whole consideration in advance, but those performances remained unperformed due his death. Mr. X's daughter, being good at singing, is ready to perform in all those shows where her father has promised to perform.

Conclusion: Here, as singing involves exercise of personal skill, the contracts entered by Mr. X for his singing performance has come to end with his death and thus, are discharged from the contract. Thus, Mr. X's daughter's singing performance would not be valid. Further, daughter and son of Mr. X would be liable to pay the amount of advances received by Mr. X out of the property inherited by them due to Mr. X's death.

151. X, Y and Z have recently started a business in partnership, there partnership deed contains profit sharing ratio and nothing else

After one year of successful running the business. X started similar business in his personal capacity where he and his son used to look after the business.

Y and Z raised objection to X's carrying on of similar business, but X has told them that their partnership deed does not prohibit carrying on similar business, so he can legally carry similar business.

decide rights and obligations of X, Y and Z?

Ans:- **Provision:** As per section 11 of the Indian Partnership Act, 1932, clearly provides that, notwithstanding anything contained in section 27 of the Indian Contract Act, the contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Further section 16 of the act provides that subject to contract between the partners,

a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Facts of the case: In the given case, Mr. X, Mr. Y and Mr. Z are the partners of the recently started partnership firm with a deed containing only the profit sharing ratio and nothing else. After one year

of successful running the business, Mr. X started similar business in his personal capacity. Mr. Y and Mr. Z objected the similar carrying of business by Mr. X, but Mr. X denied their objection on the ground that there is no such clause in the partnership deed to this effect so he can legally carry on similar business.

Conclusion: Here, Mr. X is carrying business which is competing with the business of the firm in which he is a partner. Thus, objection raised by Mr. Y and Mr. Z is valid and Mr. X would be liable to the firm all the profit earned by him out of that business.

152. X, Y and Z have agreed to form a partnership firm of which total capital would be Rs.5 Lacs and each of them would contribute equal amount

X being socially active was taking more efforts than other partners in the business activities

As per the partnership deed interest is payable on capital @10% p.a. but there is nothing in the agreement as to remuneration to partners

X who took all the efforts to grow business multi-folds is claiming that he should be paid remuneration, at least as much as he used to get earlier in a private company where he was working as marketing manager before they all started the partnership firm

Ans:- **Provision:** According to section 13 of the Indian Partnership Act, 1932, subject to contract between partners, a partner is not entitled to receive remuneration for taking part in the conduct of the business in addition to his share of profit in the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. Further, where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits provided there must be either an express agreement to that effect, or practice of the particular partnership or any trade custom to that effect; or a statutory provision which entitles him to such interest.

Facts of the case: In the given case, Mr. X, Mr. Y and Mr. Z agreed to form a partnership with a total capital of Rs. 5 lacs to be brought by each of them equally. Mr. X was more actively involved in the business activities of the firm as compared to other partners. As per the partnership deed, 10% interest was payable on capital of the partners, but the deed was silent in respect of remuneration of partners. Mr. X, being socially and actively involved in business activities, claimed that he should be paid remuneration for his extra efforts as much he used to get earlier in a private company where he was working as a marketing manager.

Conclusion: Here, as there is no agreement as per the clauses of partnership deed for payment of remuneration to the partners nor there is any usage of trade to pay remuneration. Therefore, Mr. X would not be entitled to any remuneration for his efforts.

153. Rahul and Rohan own a business in partnership where they manufacture plastic pipes, and other plumbing material.

Rahul started a manufacturing unit in his personal capacity where he would be manufacturing raw material required by Fertilizer companies

Rohan wants to stop Rahul from running that other business as that is affecting Rahul's involvement in firms' activities.

Can Rahul be prevented from carrying that other business?

would your answer be different if the partnership deed contained a condition which reads as follows?

"no partner should carry any business other than firm's business"

Ans:- **Provision:** As per the provisions of the Indian Partnership Act, 1932, partners of the firm can carry on their own business while they are partners provided there is no such express contract restraining partner form carrying any business other than that of the firm while he is a partner. Further, according to section 16 of the act, subject to contract between the partners,-

a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Facts of the case: In the given case, Rahul and Rohan, partners in a firm engaged in manufacturing of plastic pipes and other plumbing material. Rahul started a manufacturing unit engaged in manufacturing of raw material required by fertilizers companies in his personal capacity. Rahul wants to stop Rohan from running that other business as it is affecting Rahul's involvement in firm's activities.

Conclusion: Here, there is neither condition contained in partnership deed which states that partners shall not carry on their personal business other than the business of the firm nor the business carried by Rahul is competing with that of the firm's business. Therefore, Rohan cannot restrain Rahul from carrying his other personal business. On the other hand, if the partnership deed contained a condition that "no partner should carry any business other than firm's business", then Rohan would be in position to stop Rahul from carrying a business other than that of the firm.

154. Sanjay and Sujata engaged in Last month and their marriage was supposed to take place this week

Before few days of marriage Sanjay calls up Sujata and tell her that he won't be able to marry her as he loves some other girl and wants to marry her

what are the rights available to Sujata in this case?

Ans:- **Provision:** According to section 73 of the Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such a 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. There are different types of damages. Vindictive damages or exemplary damages may be awarded only in two cases,-

a) for breach of promise to marry because it causes injury to his or her feelings; and

b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages.

A lump sum amount needs to be paid as damages as actual loss is not measurable in such cases.

Facts of the case: In the given case, Sanjay engaged with Sujata a month before and their marriage was supposed to take place in a week. But, few days before marriage, Sanjay called up Sujata and told her that he won't be able to marry her as he loves some other girl and wants to marry her.

Conclusion: Here, there is an emotional injury caused to Sujata due to Sanjay's refusal to marry her which cannot be calculated in terms of money or any other specific manner. Therefore, Sujata can claim lump sum amount as damages not dependent on actual loss.

155. Mohan promised to supply 5 truckloads of Vegetables over next one month, out of his farm which is used to produce vegetables by him

The goods were not yet produced at the time of contract but were in the production process

due to cyclone all the crop in Mohan's farm got destroyed and now it will take at-least 6 more moths for Mohan to grow again all the vegetables

In this case the contract between Mohan and the buyer is?

Ans:- **Provision:** According 2(6) of the Sale of Goods Act, 1930, future goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale. A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a man cannot transfer what is not in existence. On the other hand, section 6 of the act states that existing goods are

such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller at the time of contract of sale.

Facts of the case: In the given case, Mohan promised to supply 5 truckloads of vegetables over next month, out of the vegetables grown by him in his farm. The goods were not yet produced at the time of contract but were in the production process. Due to cyclone, all the crops in Mohan's farm got destroyed and it would take 6 months more to grow the crops again.

Conclusion: Here, the vegetables were not identified as they were not ready to sale and existing at the time of entering into contract which means these are the future goods and the agreement to supply vegetables by Mohan is an agreement to sale and thus, destruction of vegetables due to cyclone does not makes the contract void or commercially impossible. Therefore, the contract to supply vegetable between Mohan and customer is valid and enforceable.

156. Raj is a regular customer of M/s Somnath and company, which is a readymade garment shop

Raj visited the shop and asked for a cotton T shirt suitable for his son, he also informed age of his son which is 7 years old

After reaching Raj tried it for his Son but it was too small in size and he wanted to return the same but then it came to his mind that the rule is that 'let the buyer beware' or 'caveat emptor'

can Raj return the shirt or get it replaced?

Ans:- **Provision:** As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware". According to section 16 of the Sale of Goods Act, 1930, subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, but where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

Facts of the case: In the given case, Mr. Raj purchased T-shirt from M/s Somnath and Company, trader of readymade garments, by informing the shopkeeper that age of his son is 7 years and he wants to buy cotton T-shirt for him. After reaching home Raj tried it for his son but it was too small in size and thus, he wanted to return the same, but then he reminded of the rule that is "let the buyer be aware" or "caveat emptor".

Conclusion: Here, the rule of caveat emptor will not apply in this case, as the Raj has told his purpose and description for buying the clothes and also he relied on the shopkeeper to provide the suitable clothes for 7 year old boy. But the shopkeeper supplied different clothes. Thus, Raj can avoid the contract as there is breach of implied condition.

157. Rakesh ordered over telephone certain goods (grocery items) from a shop

Rakesh asked them to deliver the goods at his address to which the shopkeeper also agreed but nothing was decided as to who will bear the freight for delivery

when the goods were delivered the delivery, person demanded Rs.50 towards auto rickshaw charges for delivery

Is Rakesh liable to pay the charges?

Ans:- **Provision:** According to the provisions of the Sale of Goods Act, 1930, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary. Further, in case of contract of sale, unless the seller has agreed to bear the delivery charges, it is the buyer who has to bear the delivery charges.

Facts of the case: In the given case, Rakesh ordered goods over telephone certain goods from grocery shop. Rakesh asked them to deliver the goods at his address to which shopkeeper also agreed, but nothing was decided as to who will bear the freight for delivery. On delivering the goods to Rakesh's address, the delivery person demanded Rs. 50 towards auto rickshaw charges for delivery.

Conclusion: Here, as it was not agreed between Rakesh and the shopkeeper as to who shall pay for the freight of rickshaw. Thus, Rakesh is liable to pay the freight charges of rickshaw for delivery of goods to his address.

158. Kanchan and Manoj agreed to marry each other and their wedding ceremony was fixed to be conducted in 1st week of Aug

Few days before the wedding Kanchan wrote a letter to Manoj in which she asked Manoj to forgive her as she wants to marry one of her friend Mayank

Mayank and Kanchan have now agreed to marry each other in second week of August

what are rights available to Manoj in such circumstances?

Ans:- **Provision:** According to provisions of the Indian Contract Act, 1872, where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract. But in case of personal contracts like contract of marriage, specific performance cannot be

demanded. Instead, vindictive or exemplary damages can be claimed. Vindictive damages or exemplary damages may be awarded only in two cases,-

a) for breach of promise to marry because it causes injury to his or her feelings; and

b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages.

A lump sum amount needs to be paid as damages as actual loss is not measurable in such cases.

Facts of the case: In the given case, Kanchan and Manoj agreed to marry each other in 1st week of August. Before few days of marriage, Kanchan wrote letter to Manoj asking him to forgive her as she wants to marry one of her friend Mayank. Mayank and Kanchan agreed to marry in 2nd week of August.

Conclusion: Here, as contract of marriage is of personal nature, Manoj cannot demand the specific performance. But, Manoj can claim vindictive damages from Kanchan for the emotional loss that he has suffered due to breach of contract to marry him.

159. M/s Surya Traders is an online store selling different products in its own name

One of the customer placed an order for a Refrigerator to Surya Traders through Surya Traders online shopping mobile application and immediately made payment through debit card

Next day one representative of surya Traders called up the customer and informed him that they currently do not have stock of that particular refrigerator and they have transferred the order to another seller known as Teja Traders who shall now fulfil the order

The representative also informed the customer that the Surya traders would be making payment to Teja traders and the customer need not worry about the payment and all

Teja Traders reputation in the market is not that good and they mostly sell made in china products with faulty specifications

The customer wants to know if he can deny transfer of order to Teja traders by Surya Traders and if yes on what grounds he can deny the same.

Ans:- **Provision:** According to provisions of the Indian Contract Act, 1872, assignment means transfer of rights or benefits from one person to another. It means in the matter of assignment, however the benefit of a contract can only be assigned but not the liabilities there under. This is because when liability is assigned; a third party gets involved therein. It is effective against debtor only if notice is given to him.

Facts of the case: In the given case, M/s Surya Traders is an online store selling different products. One of the customers placed an order for a Refrigerator to Surya Traders through Surya Traders online shopping mobile application and immediately made payment through debit card. Next day one representative of Surya Traders called up the customer and informed him that they would not able to supply goods due to unavailability of stock of that particular refrigerator and they have transferred the order to another seller known as Teja Traders and also informed the customer that the Surya traders would be making payment to Teja traders and the customer need not worry about the payment and all. But the reputation of Teja traders is not good in the market as sells china products. Thus, customer want to deny the offer placed.

Conclusion: Here, M/s Surya Traders has transferred its obligation to supply goods to M/s Teja Traders, which is not permitted under the act as only rights can be assigned and not the obligation under the contract. Thus, customer can deny the order of refrigerator placed by him.

160. Jay traders is a grocery store in South Delhi

One customer walks into the shop and puts a 100 rupee note in front of the cash counter and asks to give 2 kg of rice

The person sitting there accepts the money and ask one of its employees to give 2 kg's of rice

The customer bring the rice bag to his home and he finds that the goods given to him are rice particles (broken pieces of rice) which is usually sold in the market as "kanaki" or "tukada"

can the customer return the goods and if yes on what grounds?

Ans:- **Provision:** In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. According to section 16(2) of the Sale of Goods Act, 1930, where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination. The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell. Further, in the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Facts of the case: In the given case, a Jay trader is a grocery store in South Delhi. One customer came to shop and putting a 100 rupee note in front of the cash counter, asked to give 2 kg of rice. The person sitting there accepted the money asking one of its employees to give 2 kg's of rice. But when the customer brought the rice bag to his home, he finds that the goods given to him are rice particles (broken pieces of rice) which are usually sold in the market as "kanaki" or "tukada".

Conclusion: Here, exception to rule of caveat emptor i.e conditions as to merchantability will apply. Thus, there is breach of condition as to merchantability though the rice tukada are wholesome in nature but they are different from the normal rice. Therefore, customer can return the goods on this ground.

161. A Pencil must have ability of being used for writing, an eraser must be useful to erase and a sharpener must have sharpening ability. This is an example of condition as to _____.

Ans:- **Provision:** According to section 16(2) of the Sale of Goods Act, 1930, where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell. Thus, the goods bought shall satisfy the purpose for which they are bought.

Conclusion: Therefore, a pencil must have ability of being used for writing. An eraser must be useful to erase and sharpener must have sharpening ability. These, all are the conditions as to mechantability of goods.

162. CASE 1

Rahul went into a readymade garment shop as he wanted to buy a pure cotton T-shirt for himself to be used in the summer. He saw many shirts and bought one of the shirts which he thought to be made up of pure cotton but after washing it 2-3 times he realised that it's not pure cotton

CASE 2.

Yogesh went into a well-known shoe shop and asked the salesmen there to show him leather shoes, the person there showed him 3-4 pairs of shoes, Yogesh selected one of the pair out of pairs showed to him by the salesmen and paid its price. When he used the shoes he realised that it's not leather

What are the remedies available to the customer in above two cases?

Ans:- **Provision:** As per the provisions of the Sale of Goods Act, 1930, in case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market,

it is for the buyers to make a proper selection or choice of the goods. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. It is the duty of the buyer to satisfy him before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible. The rule of "Caveat emptor" states that "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Facts of the case: In the given case, Mr. Rahul went into a readymade garment shop for buying a pure cotton T-shirt for himself for summer. He saw many shirts and bought one of the shirts thinking that the shirt is made up of pure cotton but after washing it 2-3 times he realised that it's not pure cotton.

Conclusion: Here, Mr. Rahul has purchased the T-shirt from his own skill and judgment of selection and did not relied on shopkeeper. Thus, as per the rule of caveat emptor, there is no remedy available to Mr. Rahul.