

# CA FOUNDATION

CA

## रामबाण WARM-UP SESSION

DECEMBER 2023

BUSINESS LAWS & BCR

SUPER 100 QUESTIONS

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# TOPICS *to be covered*

1

The Indian Contract Act, 1872

2

The Sale of Goods Act, 1930

3

The Indian Partnership Act, 1932

4

The Companies Act, 2013

5

The Limited Partnership Act, 2008



# THE INDIAN CONTRACT ACT, 1872

#Q.1 A sends an offer to B to sell his second-car for Rs. 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition?

↳ A is not correct



**Provision**

Acceptance cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself.

Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance.

**Analysis and conclusion**

So, in the given problem, **if B remains silent, it does not amount to acceptance.**

The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.



#Q.2 Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

(i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.

(ii) Obligation of finder of lost goods to return them to the true owner.

(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed.

Void Contract

Implied Contract



It is an implied contract and A must pay for the services of the coolie detailed by him.

- (i) **Implied Contracts:** Implied contracts **come into existence by implication.** Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.
- (ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. **These are said to be quasi-contracts.**

**Quasi-Contract:** 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.

(iii) The above contract is a void contract.

**Void Contract:** Section 2 (j) states as follows: “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. Thus, a void contract is one which cannot be enforced by a court of law.



#Q.3 Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872.

↓  
offer v/s Invitation to offer



### Provision

Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. 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 invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

### Analysis and conclusion

In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.



#Q.4 Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

**Examine with reference to the Indian Contract Act, 1872:**

- (i) On which date, the offer made by Mr. B will complete?
- (ii) Discuss the validity of acceptance.
- (iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together?



letter of offer

Post 10 April

Reach 12 April

Read 13 April ✓

letter of Acceptance  $\Rightarrow$  20 April  $\Rightarrow$  Invalid

Revocation of Accepta  $\Rightarrow$  19 April  $\Rightarrow$  Valid ✓

Case 3

Dono same date



**(i) Provision**

According to Section 4 of the Indian Contract Act, 1872, “the communication of offer is complete when it comes to the knowledge of the person to whom it is made”.

When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

**Analysis and conclusion**

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

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



**(ii) Provision**

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

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

**Analysis and conclusion**

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted.



As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

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

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



#Q.5 Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

Lapse of Time ✓

Insanity or death ✓

Subsequent illegality ✓

Counter Offer

Non-acceptance as per prescribed mode

Notice of Revocation

Non-fulfilment of condition precedent



#Q.6 <sup>①</sup> Define an offer. <sup>②</sup> Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

②



**Definition:** The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as **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.**

**Essentials:** The following are important essentials of an offer: -

- (i) Must be capable of creating legal relation.
- (ii) Must be certain, definite and not vague.
- (iii) Must be communicated.
- (iv) Must be made with a view to obtaining the assent of the other party
- (v) May be conditional
- (vi) Offer should not contain a term the non compliance of which would amount to acceptance



- (vii) May be general or specific
- (viii) May be expressed or implied
- (ix) A statement of price is not an offer

Offer and an Invitation to an offer: In terms of Section 2(a) of the Act, 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. 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.



#Q.7 Mr. Pratham applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872?



**Provision**

As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. **Communication of acceptance by third person cannot be concluded in valid acceptance.**

**Analysis and Conclusion**

In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal.

On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. **No valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit** against the school for cancellation of his appointment.



*→ Seller*  
#Q.8 *→ Buyer* Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 for Rs. 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2020, Mr. Sohanlal died leaving behind his son and wife. On 15th October, 2020 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?



### Analysis and conclusion

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land **were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.**



Moreover, it is provided in the law that “in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.”

In such a case, third party to a contract can file the suit although it has not moved the consideration. Hence, **Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.**



#Q.9 The general rule is that an agreement without consideration is void.  
Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872.

Or

State the exceptions to the rule "An agreement without consideration is void".

↳ Natural ABCD

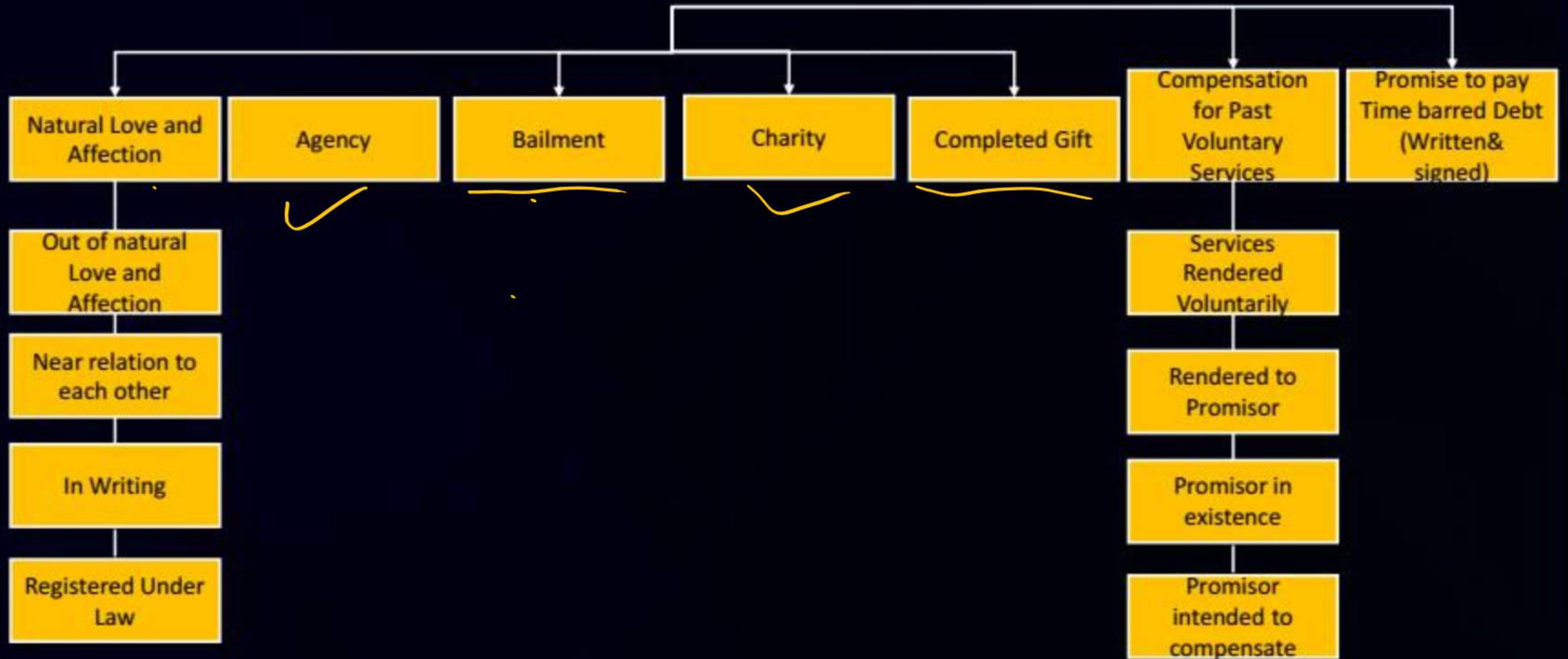
Or

"No consideration, no contract" Comment.

Or

Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain.







#Q.10 A stranger to a contract cannot sue, however in some cases even a stranger to contract may enforce a claim. Explain.

Or

“Only a person who is party to a contract can sue on it”. Explain this statement and describe its exceptions, if any.

→ Doctrine of Privity of Contract



7 Exceptions  
(A3C2TS)

Agent

Assignment

Acknowledgement or Estoppel

Covenant running with Land

Certain Marriage Contracts

Trust

Family Settlement



#Q.11 Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons :-

- (a) X aged 16 years <sup>→ Minor</sup> borrowed a loan of Rs. 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.
- (b) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.



**(a) 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 therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

According to Section 68 of the Act, a claim for necessaries supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

**Analysis and Conclusion**

In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio.



Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessaries supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

### **(b) Provision**

As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made.

### **Analysis and Conclusion**

In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.



#Q.12 State with reason(s) whether the following agreements are valid or void:

- (i) A clause in a contract provided that no action should be brought upon in case of breach. ⇒ Void ⇒ Agreement
- (ii) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other. ⇒ Valid
- (iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it. ⇒ Void
- (iv) X, a physician and surgeon, employs Y as an assistant on a salary of Rs. 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

↳ Valid



(i) The given agreement is **void**.

**Reason:** As per Section 28 of the Indian Contract Act, 1872, this clause is in **restraint of legal proceedings** because it restricts both the parties from enforcing their legal rights.

(ii) The given agreement is **valid**.

**Reason:** 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. A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement suit may be filed in one of the courts having jurisdiction.



(iii) The said agreement is void.

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

(iv) The said agreement is **valid**.

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



#Q.13 Distinguish between wagering agreement and contract of insurance.

Or

Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872.



Basis of differences	Contracts of <u>Insurance</u>	<u>Wagering Agreement</u>
Meaning	It is a contract to <u>indemnify the loss</u> .	It is a promise to <u>pay money or money's worth</u> on the happening or non-happening of an uncertain event.
<u>Consideration</u>	The crux of insurance contract is the <u>mutual consideration</u> (premium and compensation amount).	There is <u>no consideration</u> between the two parties. There is <u>just gambling</u> for money.
<u>Insurable Interest</u>	Insured party has <u>insurable interest</u> in the life or <u>property</u> sought to be insured.	There is <u>no property</u> in case of <u>wagering agreement</u> . There is betting on other's life and properties.



Basis of differences	Contracts of Insurance	Wagering Agreement
<u>Contract of Indemnity</u>	Except life insurance, the <u>Contract of insurance indemnifies the insured person against loss.</u>	Loser has to pay the fixed amount on the happening of uncertain event.
<u>Enforceability</u>	It is <u>valid and enforceable</u>	It is <u>void and unenforceable</u> agreement.
<u>Premium</u>	Calculation of <u>premium is based on scientific and actuarial calculation</u> of risks.	<u>No such logical calculations</u> are required in case of wagering agreement.
<u>Public Welfare</u>	They are <u>beneficial to the society</u>	They have been regarded as <u>against the public welfare.</u>



#Q.14 “Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor”. Discuss.



**Minor can be a beneficiary** or can take benefit out of a contract : Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

For example: **A promissory note duly executed in favour of a minor is not void** and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

**A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership** (Section 30 of the Indian Partnership Act, 1932).



#Q.15 P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is this contract valid in the following circumstances:

(a) If P says nothing about the unsoundness of the horse to Q.  $\Rightarrow$  Valid

(b) If P says nothing about it to Q who is P's daughter who has just come of age. fiduciary

(c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing Silence = Speech  $\Rightarrow$  fraud



According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

- (a) This **contract is valid** since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- (b) This **contract is not valid** since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.
- (c) This **contract is not valid** since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.



#Q.17 Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.



### Provision

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

### Analysis and Conclusion

Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.



#Q.16 Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872

Or

Explain the circumstances in which the person is deemed to be in a position to dominate the will of the other person under the Indian Contract Act, 1872.



Essentials of Undue Influence

Relations between Parties



Deemed Position to dominate the will (MUFA)

Mental distress

Unconscionable bargains

Fiduciary Relation

Real and Apparent Authority

Object must be to take undue advantage

Burden of Proof on dominating party

Teacher / student / dayh  
⇒ Doctor & Patient  
⇒ Moneylender & borrower  
⇒ Solicitor & Client  
⇒ father - son



#Q.17 What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void.



Wagering agreement (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.

Transactions resembling with wagering transaction but are not void

- (i) Chit fund: Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.



- (ii) Commercial transactions or share market transactions: In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.
- (iv) A contract of insurance: A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.



#Q.18 Mr. SHYAM owned a motor car. He approached Mr. HARISH and offered to sell his motor car for Rs. 3,00,000. Mr. SHYAM told Mr. HARISH that the motor car is running at the rate of 20 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. HARISH agreed with the proposal of Mr. SHYAM and took delivery of the car by paying Rs. 3,00,000/- to Mr. SHYAM. After 10 days, Mr. HARISH came back with the car and stated that the claim made by Mr. SHYAM regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. HARISH can rescind the contract on the above ground.



**Provision**

As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.



### Analysis and Conclusion

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. HARISH had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. HARISH cannot rescind the contract on the above ground.



#Q.19 Point out with reason whether the following agreements are valid or void:

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



### Validity of agreements

- (a) Void Agreement: As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.
- (b) Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- (c) Void Agreement: As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (d) Void Agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.



- (e) **Valid Contract:** An agreement with alien friend is valid, but an agreement with alien enemy is void.



#Q.20 Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

- (i) Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?  $\Rightarrow$  No
- (ii) Mr. Shekhar can recover his car from Mr. Masoom?

X

$\rightarrow$  good title



### Provision

According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

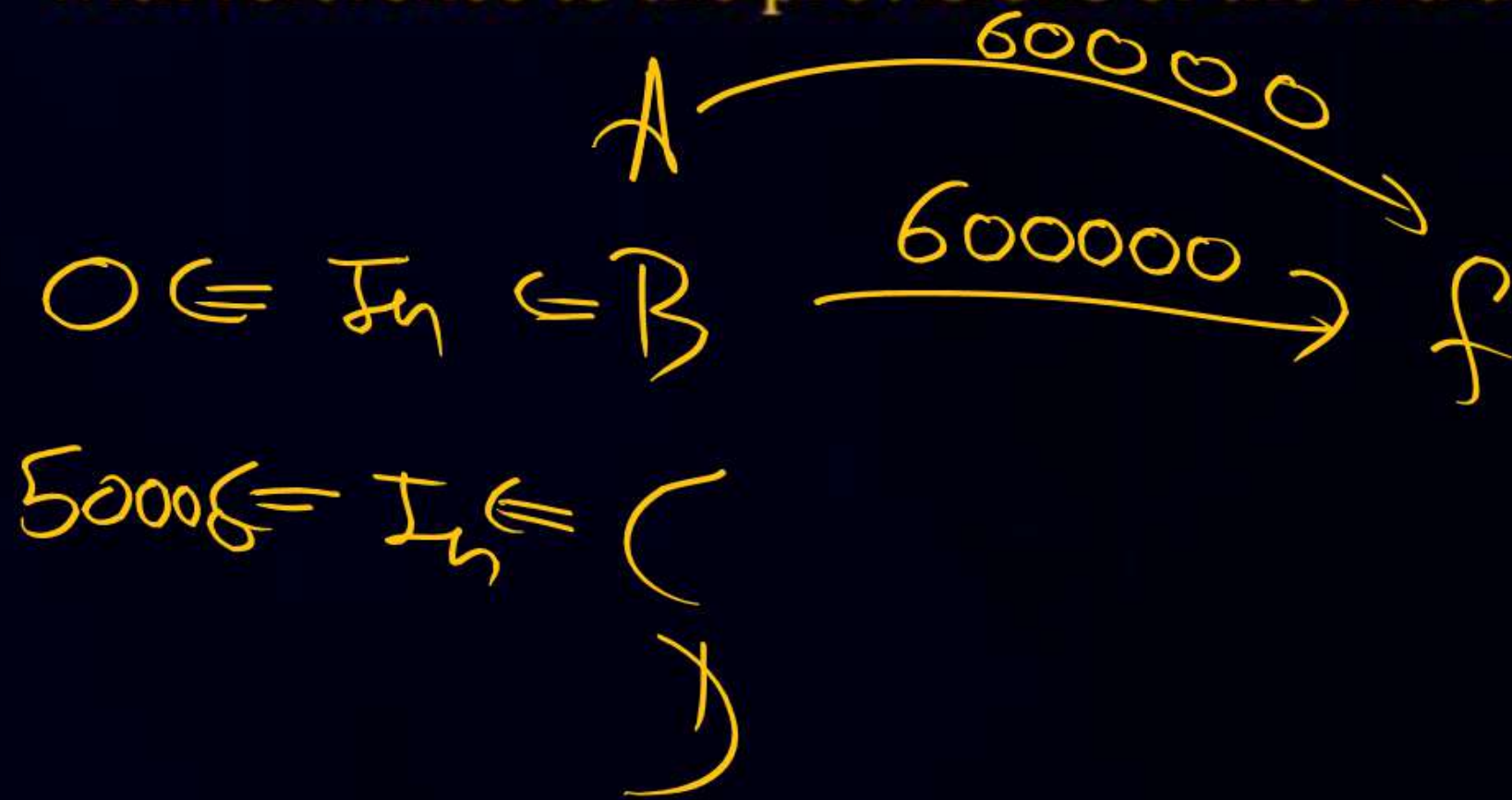
### Analysis and Conclusion

In the instant case, Mr. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.

- (i) Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, **Mr. Shekhar cannot recover the loss of Rs. 20,000.**
- (ii) Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. **Hence, Mr. Shekhar cannot recover his car from Mr. Masoom.**



#Q.21 A, B, C and D are the four partners in a firm. They jointly promised to pay Rs. 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.



D share B = less C less

$$D \Rightarrow \frac{600000}{4} + \frac{150000}{2} + \frac{100000}{2}$$

$$150000 + 75000 + 50000$$

$$\Rightarrow 275000$$



### Analysis and Conclusion

In the instant case, A, B, C and D have jointly promised to pay Rs. 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F.

Hence, A is entitled to receive Rs. 50,000 from C and Rs. 2,75,000 from D, as worked out below:

From C Rs. 50,000 = (C's Liability Rs. 1,50,000 Less: Amount he could not pay Rs. 1,00,000).

From D Rs. 2,75,000 = (D's Liability Rs.1,50,000 + 1/2 of liability of B (Loss)  $(1,50,000 * 1/2)$  i.e.

Rs. 75,000 + 1/2 of C's liability (Loss)  $(1,00,000 * 1/2)$  i.e., Rs. 50,000) In other words, equal proportion i.e., Rs. 5,50,000 (i.e. Rs.6,00,000 – Rs.50,000) / 2.



#Q.22 Explain any five circumstances under which contracts need not be performed with the consent of both the parties



Under following circumstances, the contracts need not be performed with the consent of both the parties:

- i. **Novation**: Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
- ii. **Rescission**: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)



- iii. **Alteration**: Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
- iv. **Remission**: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)
- v. **Rescinds voidable contract**: When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.



#Q.23 X, Y and Z jointly borrowed Rs. 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

- i. Whether L can compel only Y to pay the entire loan of Rs. 90,000? *Yes*
- ii. Whether L can compel only the legal representatives of Y to pay the loan of Rs. 90,000, if X, Y and Z died? *→ No*
- iii. Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

*V<sub>XZ</sub> → L ⇒ Yes*

*L ⇒ X Release*



- i. **Yes, L can compel only Y to pay Rs. 90,000/-** since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.
- ii. As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, **the representatives of all jointly must fulfill the promise.**

In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. **L cannot compel only the legal representatives of Y to pay the loan of Rs. 90,000.**



iii. According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

In this case, the **release of X does not discharge Y and Z from their liability**. Y and Z remain liable to pay the entire amount of Rs. 90,000 to L. And though X is not liable to pay to L, **but he remains liable to pay to Y and Z** i.e. he is liable to make the contribution to the other joint promisors.



#Q.24 Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?



Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. 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 e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.



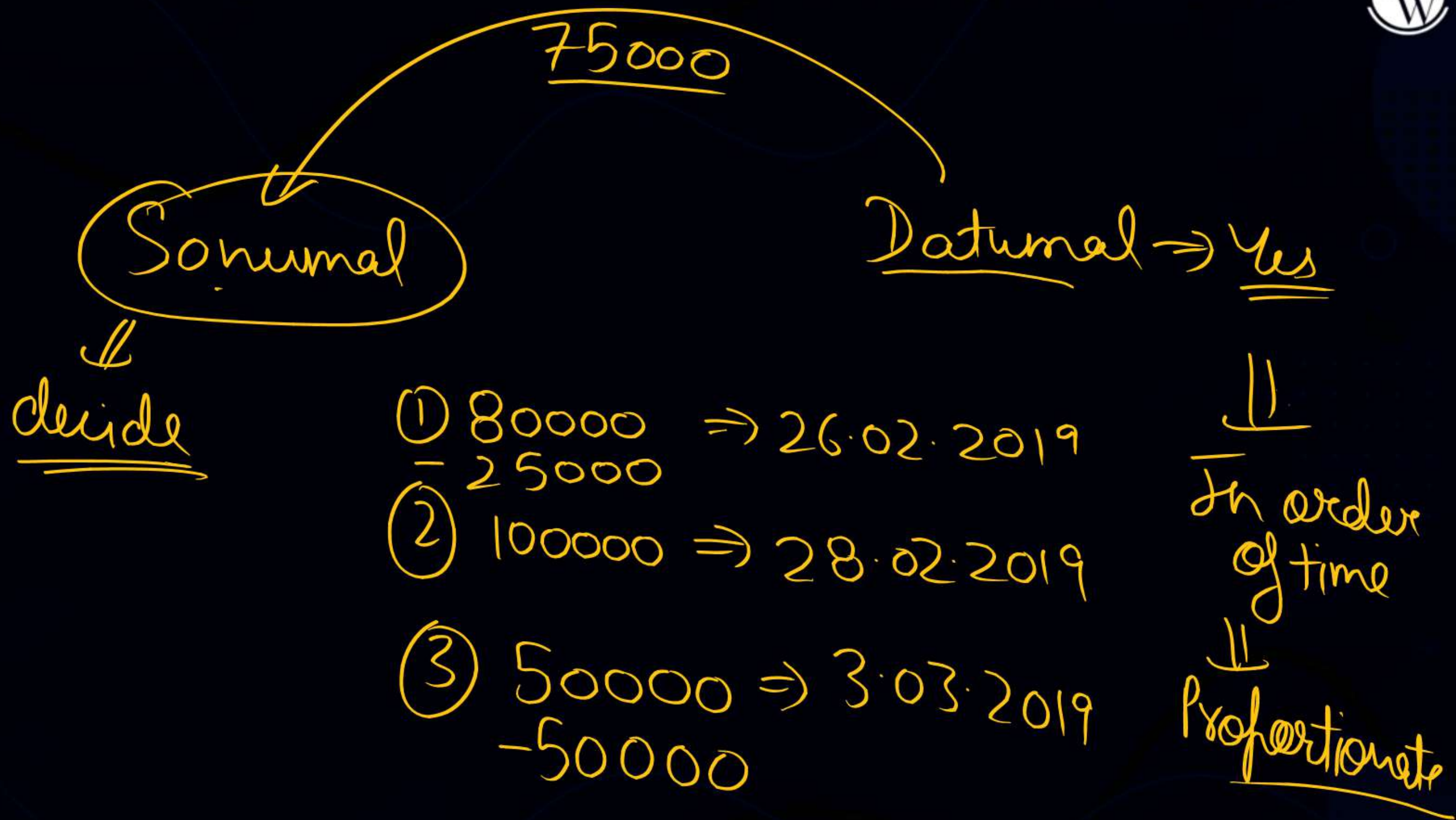
**Example:** 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

**Effect of impossibility:** The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.



#Q.25 Mr. Sonumal a wealthy individual provided a loan of Rs. 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of Rs. 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1,00,000 on 28.02.2019 and remaining Rs. 50,000 on 03.03.2019. On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that the lender should adjusted Rs. 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019. Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.







Now you decide:

- i. Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- ii. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- iii. What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?



**Provision**

Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

**i. Provision**

As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

**Analysis and conclusion**

Therefore, the contention of Mr. Datural is correct and he can specify the manner of appropriation of repayment of debt.



**ii. Provision**

As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

**Analysis and conclusion**

Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.



**iii. Provision**

As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

**Analysis and conclusion**

Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.



#Q.26 What will be rights with the promisor in following cases? Explain with reasons:

- Void
- a) Mr. X promised to bring back Mr. Y to life again. ⇒ Consideration ⇒ illus  
⇒ Initial Imp.
- b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15<sup>th</sup> March but due to riots in between reached B on 19<sup>th</sup> March. ⇒ Void
- c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands. ⇒ Void
- d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. ⇒ Void



- a) The contract is **void because of its initial impossibility** of performance.
- b) Time is essence of this contract. As by the time apples reached B, they were already rotten. The contract is **discharged due to destruction of subject matter** of contract.
- c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.
- d) Such contract is discharged without performance because of subsequent illegality nature of the contract.



#Q.27 A enters into a contract with B that he (A) sells his house for Rs. 10,00,000 to B. Further they both signed an agreement that if B uses the house for gambling purposes, then B shall pay A Rs. 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. Can A claim Rs. 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872.



### Provision

According to Section 24 of the Indian Contract Act, 1872, in an agreement, where some part of the object is legal and the other part is illegal, the question arises about the validity and enforceability of such agreements. Where the **legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.**

### Analysis and conclusion

In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e. Rs.10,00,000 is valid and enforceable. However, the agreement to pay Rs. 50,000 for gambling done in the house is illegal and thus void.

Hence, in the instant case, **sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law.**



#Q.28 Mr. Singhanian entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhanian promised to pay Rs. 20,000 for every performance. Mr. Sonu performed for two weeks but on third week, so he did not come to sing. Mr. Singhanian terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

a) Can Mr. Singhanian terminate the contract with Mr. Sonu? ⇒ Yes

Continue b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhanian allows him to perform without saying anything?

~~\*~~ c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhanian allows him to perform without saying anything?



**Provision**

According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.



### Analysis and conclusion

Therefore, in the instant case,

- a) As Mr. Sonu could not perform as per the contract, Mr. Singhanian can repudiate the contract.
- b) In the second situation, as Mr. Singhanian allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhanian had given his assent to continue the contract. Mr. Singhanian cannot terminate the contract however he can claim damages from Mr. Sonu.
- c) In case Mr. Singhanian allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhanian had given his assent for performance by third party. Now Mr. Singhanian cannot terminate the contract nor can claim any damages from Mr. Sonu.



#Q.29 State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872.



### 9 Ways to Discharge a Contract

①

1. By Performance

4. By Lapse of time

7. Promisee may waive or remit performance of promise

9. Effect of neglect of promisee to afford promisor reasonable facilities for performance

2. By Mutual Agreement

5. By operation of Law

8. Merger of Rights

3. By Impossibility of Contract

6. By Breach of Contract



#Q.30 Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020.

I. Rs. 12,120 which was due in May 2016. (Time barred debt)

II. Rs. 5,650 which was due in August 2018.

III. Rs. 9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

i. A cheque of Rs. 9,680

ii. A cheque of Rs. 15,000

$$\rightarrow 12120 \Rightarrow 2880$$

$$\rightarrow 5650 - 2880 \Rightarrow 2770$$

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



**Provision**

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872.

- a) The debtor has, at the time of payment, the right of appropriating the payment.
- b) In default of debtor, the creditor has option of election and
- c) in default of either the law will allow appropriation of debts in order of time.



### Analysis and Conclusion

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of Rs. 9,680 which was due in May 2019.

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

Hence, Mr. Girdhari can appropriate the same against the debt of Rs. 12,120 which was due in 2016 and balance against Rs. 5650 which was due in August 2018.



#Q.31 “An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived”. Discuss stating also the effect of anticipatory breach on contracts.



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.**

The law in this regard has very well summed up in *Frost v. Knight* and *Hochster v. DelaTour*:

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

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



- To either treat the contract as “rescinded and sue the other party for **damages** from breach of contract immediately without waiting until the due date of performance; or
- He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non- performance.

But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the, contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.



#Q.32 A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract.

↳ Damages is not an adequate remedy  
⇒ Court order for specific performance.



**Provision**

Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the **court may give order for specific performance** and direct the party in breach to carry out his promise according to the terms of contract.

**Analysis and conclusion**

Here, in this case, the **court may direct A to supply the item to B** because the refusal to supply the agreed unique item cannot be compensated through money.



#Q.33 Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?



**Provision**

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.



### Analysis and conclusion

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.



#Q.34 Mr. Murti was travelling to Manali with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid way in cold night. Driver advised the passenger to get the shelter in nearest hotel which was at a distance of only one kilometre from that place. The wife of Mr. Murti caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and ~~medical treatment~~ for his wife. Explain, whether Mr. Murti would get compensation for which he filed the suit?



**Provision**

Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. **But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.**

**Analysis and conclusion**

In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.



On the basis of above provisions and facts of the case, it can be said that **Mr. Murti can claim damages for the personal inconvenience and hotel charges** but not for **medical treatment for his wife because it is a remote or indirect loss.**



#Q.35 Explain the-term 'Quasi Contracts' and state their characteristics.

Or

What is meant by 'Quasi-Contract'? State any three salient features of a quasicontract as per the Indian Contract Act, 1872.



(a) Meaning of 'Quasi Contract': Under certain special circumstances obligation resembling those created by a contract is imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi Contracts'.

Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation.

These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.



The salient features of Quasi-contract:

- (1) It does **not arise from any agreement** of the parties concerned but it is **imposed by law.**
- (2) The right under it is **always a right to money** and generally though not always to **aliquidated sum of money.**
- (3) It is a right which is available **not against all the world**, but against a particular person or persons only, so that in this respect it resembles a contractual right.
- (4) It is a **duty and not promise** is the basis of such contract.
- (5) A suit for its breach may be filed in the same way as in case of a complete contract.



#Q.36 Explain the term Contingent Contract with reference to the Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.



Or

Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.

(a) Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872): A contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: A contracts to pay B Rs. 1,00,000 if B's house is burnt. This is a contingent contract.

Rules Relating to Enforcement: The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

(a) Enforcement of contracts contingent on an event happening: Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.



- (b) Enforcement of contracts contingent on an event not happening: Where a contingent contract is made contingent on non-happening of an event, it can be enforced only when its happening becomes impossible.
- (c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.
- (d) Contingent on happening of specified event within the fixed time: Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.



- (e) Contingent on specified event not happening within fixed time: Section 35 also says that - “Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen”.
- (f) Contingent on an impossible event (Section 36): Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.



#Q.37 X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can X recover it from the Manager?



### Provision

Responsibility of finder of goods (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, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

### Analysis and conclusion

In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner.



#Q.38 What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises?



- (1) Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:
- (1) It is only available if the original contract has been discharged.
  - (2) The claim must be brought by a party not in default.



The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

The claim for quantum meruit arises in the following cases:

- (a) when an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.



- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- (f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.



# THE SALE OF GOODS ACT, 1930



#Q.39 Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.



Basis of difference	Sale	Hire- Purchase
Time of passing property	<u>Property</u> in the goods is <u>transferred</u> to the buyer <u>immediately</u> at the time of contract.	The property in goods passes to the hirer upon <u>payment of the last instalment.</u>
Position of the party	The position of the <u>buyer is</u> that of the <u>owner</u> of the goods.	The position of the <u>hirer is</u> that of a <u>bailee till he pays the last instalment.</u>
<u>Termination of contract</u>	The <u>buyer cannot terminate</u> the contract and is bound to pay the price of the goods.	The <u>hirer may</u> , if he so likes, <u>terminate</u> the contract by <u>returning</u> the goods to its owner without any liability to pay the remaining instalments.



Basis of difference	Sale	Hire- Purchase
Burden of Risk of insolvency of the buyer	The <u>seller takes the risk</u> of any loss resulting from the <u>insolvency of the buyer</u> .	The <u>owner takes no such risk</u> , for if the hirer fails to pay an instalment, the owner has right to take back the goods.
<u>Transfer of title</u>	The <u>buyer can pass a good title</u> to a bona fide purchaser from him.	The <u>hirer cannot pass any title</u> even to a bona fide purchaser.
Resale	The <u>buyer in sale can resell the goods</u> .	The <u>hire purchaser</u> cannot resell unless he has paid all the instalments.



#Q.40 What is meant by delivery of goods under the Sale of Goods Act, 1930?  
State various modes of delivery.

Or

Explain the term "Delivery and its form" under the Sale of Goods Act, 1930.



- (a) Delivery of goods [section 2(2) of the Sale of Goods Act, 1930]: Delivery means **voluntary transfer of possession from one person to another**. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Modes of delivery: Following are the modes of delivery for transfer of possession:

- (i) Actual delivery: When the goods are **physically delivered to the buyer**.
- (ii) Constructive delivery: When it is effected **without any change in the custody** or actual possession of the thing as in the case of **delivery by attornment (acknowledgement)** e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.



- (iii) Symbolic delivery: When there is a **delivery of a thing in token of a transfer of something else**, i.e., delivery of goods in the course of transit may be made **by handing over documents of title to goods**, like bill of lading or railway receipt or delivery orders **or the key of a warehouse** containing the goods is handed over to buyer.



#Q.41 Classify the following transactions according to the types of goods they are:

- (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. ⇒ Ascertained goods
- (ii) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop. ⇒ Unascertained goods
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. ⇒ future goods ⇒ Agreement to sell



- (i) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. **On selection, the goods become ascertained.**  
In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- (ii) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but **unascertained goods** because **it is not known which packet is to be delivered.**
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of **sale of future goods, amounting to 'an agreement to sell.'**



#Q.42 X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?  $\Rightarrow Y \Rightarrow$  Reasonable price



### Provision

Payment of the price by the buyer is an important ingredient of a contract of sale. If the **parties totally ignore the question of price** while making the contract, **it would not become an uncertain and invalid agreement**. It will rather be a valid contract and the buyer shall pay a reasonable price. (Section 9 of the Sale of Goods Act, 1930)

### Analysis and conclusion

In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. **Y can legally demand the car from X and X can recover a reasonable price of the car from Y.**



#Q.43 "A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930.

4 cases



Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.



Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.

- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.



#Q.44 Mr. Das, a general store owner went to purchase 200 kg of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as Rs. 150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice.

The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice.

With reference to the provisions of the Sales of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice?



**Provision**

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

- (a) the bulk shall correspond with the sample in quality;
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

**Analysis and Conclusion**

In the instant case, Mr. Das on examination of the sample on which he agreed to buy, failed to notice that it contained a mix of long and short grain of rice.

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



Therefore, Mr. Das, the buyer does not have any option available to him for grievance redressal.

In case Mr. Das specified his exact requirement as to length of rice, then **there is an implied condition that the goods shall correspond with the description.** If it is not so, then in such case, seller will be held liable.



Duties of buyer

#Q.45 What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"?

(Duties of Seller) Or

Explain the term "Caveat-Emptor" under the Sale of Goods Act, 1930? What are the exceptions to this rule?



## Caveat Emptor

In case of sale of goods, the doctrine <sup>①</sup> 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods.

If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and 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"

Exceptions: Following are the exceptions to the doctrine of Caveat Emptor:



## Exceptions to Caveat Emptor/ Duties of Seller

Goods Sold by Description

Sale by sample

Fitness as to quality or use except brand or patent name

Goods by sample as well as description

Trade usage

Seller actively conceal defect or guilty of fraud

Condition as to merchantability

Goods of Merchantable quality

## Caveat Emptor/Duties of Buyer

Let the Buyer beware

Seller is not bound to disclose the defects in the goods

Buyer cannot hold seller responsible for his bad selection of goods

Rule is laid down in section 16



- (1) **Fitness as to quality or use:** 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 [Section 16 (1) of the Sales of Goods Act, 1930].
- (2) **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
- (3) **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.



- (4) **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description 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 [Section 16(2)].
- (5) **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
- (6) **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].



- (7) Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
- (8) Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.



#Q.46 For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?



### Provision

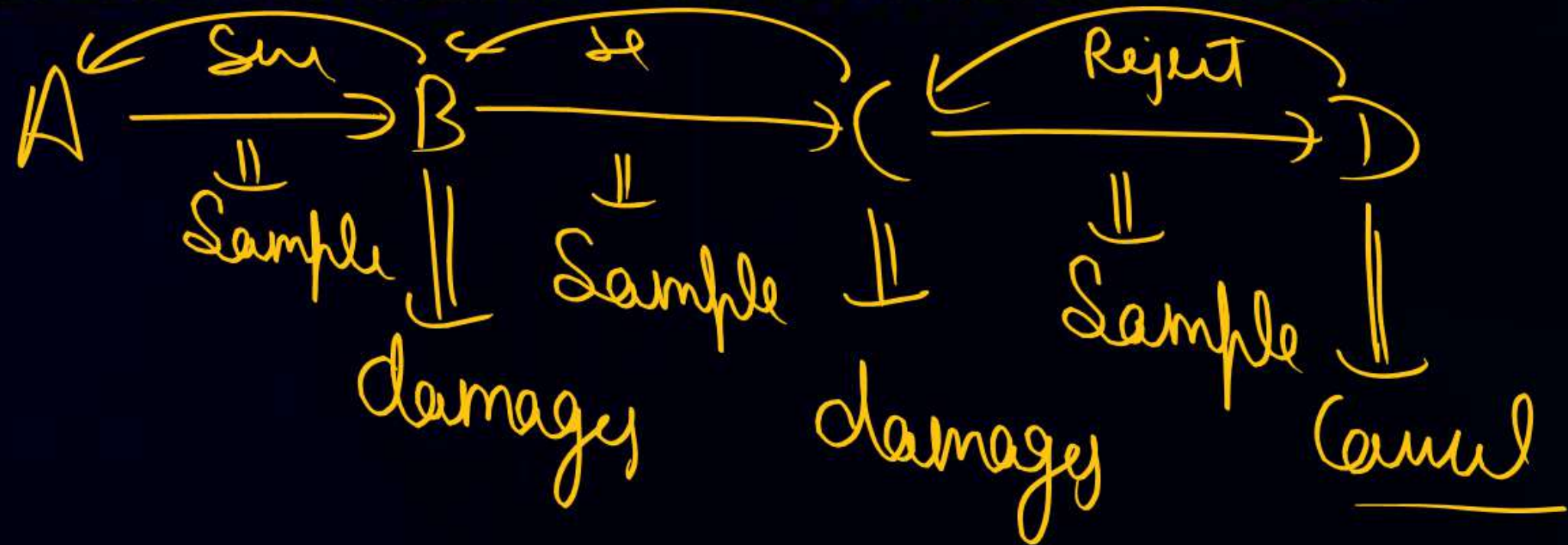
Fitness of Cloth: As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business.

### Analysis and Conclusion

In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, **the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.**



#Q.47 Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930.





### Provision

when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample.

### Analysis and conclusion

In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930.



#Q.48 A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?



### Provision

This is a case related to implied condition as to wholesomeness which provides that the **eatables and provisions must be wholesome that is they must be fit for human consumption.**

### Analysis and conclusion

In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and **can also claim damages from the seller**



#Q.49 What is Implied Warranties? Explain 4 cases of Implied Warranties?



**4 Implied Warranties**

Warranty as to undisturbed possession

warranty as to quality or fitness by usage of trade

Warranty as to non- existence of encumbrances

disclosure of dangerous nature of goods



Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract.

It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties. These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

Implied Warrants:

- (1) Warranty as to undisturbed possession [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.



- (2) Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- (3) Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
- (4) Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

If there is a breach of warranty, the seller may be liable in damages.



#Q.50 “A non-owner can convey better title to the bonafide purchaser of goods for value.” Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930?

Or

Explain the circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per the Sale of Goods Act, 1930.

Or

“Nemo Dat Quod Non Habet” – “None can give or transfer goods what he does not himself own.” Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.





Exceptions to Nemo Dat Quod non habet

<u>Sale by Mercantile Agent</u>	<u>Sale by One of the Joint Owners</u>	<u>Sale in case of voidable contract</u>	<u>Sale by person who has already sold the goods</u>	<u>Sale by buyer obtaining possession before property is transferred to buyer</u>	Sale by unpaid seller exercising right of lien or stoppage in transit	Sale under the provisions of other act	Effect of Estoppel
<u>Agent has Possession of Goods/document with consent of owner</u>	<u>One joint owner has sole possession of goods</u>	Buyer acquire a good title to the goods sold by seller	Sale by person who has already sold the goods but continues with the possession	Sale by buyer obtaining possession before property is transferred to buyer	Sale by unpaid seller who had exercised his right of lien or stoppage in transit	Sale by official receiver/ Liquidator of company will give valid title	Where the owner is estopped by the conduct from denying the seller's authority
<u>Sale made by agent in ordinary course of business as agent</u>	<u>Possession is with the consent of other joint owners</u>	Who obtained possession of goods under voidable contract	Of goods or documents of title, he may sell them to third person	He may sell, pledge or otherwise dispose of the goods to a third person	who resells the goods to other person	Purchase of goods from a finder of goods under certain circumstances	The transferee will get a good title against the true owner
<u>Buyer acted in good faith, no notice of fact that seller has not authority to sell</u>	Buyer acted in good faith <del>no</del> notice of fact that seller has not authority to sell	Contract has not been rescinded until the time of the seller	Buyer acted in good faith, without notice of previous sale	Buyer acted in good faith, without notice of lien or other right that	Buyer acquires a valid title against the original buyer	A Sale by Pawnee can convey a good title to the buyer	Proof that true owner has actively suffered /held out other person as owner



In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.

**1. Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

- a) If he was in possession of the goods or documents with the consent of the owner;
- b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).



Mercantile Agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

- 2. Sale by one of the joint owners (Section 28):** 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.



3. **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
4. **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier.  
A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [Section 30(1)].



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

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.



**6. Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner.

But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

**7. Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].



**8. Sale under the provisions of other Acts:**

- i. Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- ii. Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- iii. A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]



#Q.51 Ms. R owns a two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan.

↳ Act is Equivalent to acceptance  
↓  
own

Ms. R now wants to claim the two Wheeler from Mr. A. Will she succeed?

Examine with reference to the provisions of the Sale of Goods Act, 1930,

what recourse is available to Ms. R? ⇒ Price recover from Ms. K

Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

↓  
Ms R can recover two wheeler  
from Mr. A

↓  
Cash or Return basis



**Provision**

As per the provisions of Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-

- a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.



### Analysis and conclusion

Referring to the above provisions, we can analyse the situation given in the question:

- i. In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (two wheeler) passes to Mr. A. **Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only**



- ii. It may be noted that where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for. Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and **Ms. R could recover the two wheeler from Mr. A.**



#Q.52 A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract. Discuss if such a sale made by non-owner is valid or not as per the provisions of Sale of Goods Act, 1930?



**Provision**

Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods.

One of the exceptions is sale by person in possession under a voidable contract (Section 29 of Sale of Goods Act, 1930)

1. If a person has possession of goods under a voidable contract.
2. The contract has not been rescinded or avoided so far
3. The person having possession sells it to a buyer
4. The buyer acts in good faith
5. The buyer has no knowledge that the seller has no right to sell.

Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.



### Analysis and conclusion

Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of **ring made by Mr. A to Mr. C is a valid sale.**



#Q.53 Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demands the price of Television set from Akansh. Whether Akansh is <sup>not</sup> liable to pay the price under the Sale of Goods Act, 1930? If not, who will ultimately bear the loss?

Jethalal

→ Sale or Return basis



**Provision**

As per the provisions of Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-

- a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.



Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

### Analysis and conclusion

According to above provisions and fact, the property is not passes to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Jethalal.



#Q.54 Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

→ Constructive delivery (delivery by acknowledgment)



**Provision**

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.



### Analysis and conclusion

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.



#Q.55 What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?

Or

Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the “Sale by Auction.”



Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

- a) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
- b) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- c) **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.



- d) **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



#Q.56 What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930?



If the seller commits a breach of contract, the buyer gets the following rights against the seller:-

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
3. **Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –



- i. set up against the seller the breach of warranty in diminution or extinction of the price; or
- ii. sue the seller for damages for breach of warranty

**4. Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.



## 5. Suit for interest:

- 1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
- 2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.



#Q.57 Explain the rights of unpaid seller against the goods.

Q ⇒ Explain the rights of unpaid seller against the buyer

Q ⇒ Explain the rights of unpaid seller



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

- i. **Right of lien (Section 47)**: According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-
  - a) where the goods have been sold without any stipulation as to credit;
  - b) where the goods have been sold on credit, but the term of credit has expired;
  - c) where the buyer becomes insolvent.
- ii. **Right of stoppage in transit (Section 50)**: When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.



**iii. Right to re-sell the goods (Section 54):** The unpaid seller can exercise the right to re-sell the goods under the following conditions:

1. Where the goods are of a perishable nature
2. Where he gives notice to the buyer of his intention to re-sell the goods
3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale.
5. Where the property in goods has not passed to the buyer



#Q.58 Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer fall the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?



### Provision

By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

### Analysis and conclusion

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.



# THE INDIAN PARTNERSHIP ACT, 1932



#Q.59 Ms. Lucy while drafting partnership deed taken care of few important points. What are those points?

She want to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed?



Ms. Lucy while drafting partnership deed must take care of following important points:

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'
- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.



List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans



10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.



#Q.60 Business carried on by all or any of them acting for all. Discuss the statement under the Indian Partnership Act, 1932.



- Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners.
- An act of one partner in the course of the business of the firm is in fact an act of all partners.
- Each partner carrying on the business is the principal as well as the agent for all the other partners.
- He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.
- It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership



In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that:

- (1) there should be an agreement to share the profits as well as the losses of business; and
- (2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

The fact that the **exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.**



#Q.61 Explain the following kinds of partnership under the Indian Partnership Act, 1932:

- (i) Partnership at will
- (ii) Particular partnership



1. Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:
  1. No fixed period has been agreed upon for the duration of the partnership;  
and
  2. There is no provision made as to the determination of the partnership.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.



## 2. Particular partnership:

A partnership may be organized for the performance of a single adventure as well as for the conduct of a continuous business.

Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.



#Q.62 State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

- Sale
- Mortgage
- otherwise



Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

- (1) During the continuance of partnership, such transferee is not entitled
  - (a) to interfere with the conduct of the business,
  - (b) to require accounts, or
  - (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.



- (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
  - (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners.

A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest.

A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.



#Q.63 Whether a minor may be admitted in the business of a partnership firm?  
Explain the rights of a minor in the partnership firm.



A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract.

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits.

When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:



## Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.



#Q.64 State the legal position of a minor partner after attaining majority:

(c) When he opts to become a partner of the same firm.

(d) When he decide not to become a partner.



When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

When he elects not to become a partner:

- (a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.



- (b) His share shall not be liable for any acts of the firm done after the date of the notice.
- (c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.



#Q.65 A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

↓  
20ptia  
20% or 6% p.a.  
Interest



**Provision**

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

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



### Analysis and conclusion

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:

- (a) the 20% shares of profits (as per the partnership deed); or
- (b) interest at the rate of 6 per cent per annum on the amount of A's share in the property.



#Q.66 Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932?



According to Section 19 of the Indian Partnership Act, 1932, subject to the provisions of Section 22, 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.

The authority of a partner to bind the firm conferred by this section is called his “implied authority”.



In the <sup>learn</sup> absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) submit a dispute relating to the business of the firm to arbitration;
- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm;
- (d) withdraw a suit or proceedings filed on behalf of the firm;
- (e) admit any liability in a suit or proceedings against the firm;
- (f) acquire immovable property on behalf of the firm;
- (g) transfer immovable property belonging to the firm; and
- (h) enter into partnership on behalf of the firm.



#Q.67 X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

- Test of Good faith
- ① Power  $\Rightarrow$  Contract
  - ② Majority of Partners
  - ③ Good faith
- ① firm interest
  - ② Notice
  - ③  $\Rightarrow$  OOBH



### Provision

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.



- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

### **Analysis and conclusion**

Thus, according to the test of good faith as required under Section 33(1),  
expulsion of Partner Y is not valid.



#Q.68 Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of Rs. 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

→ Active partners



### Provision

By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. 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. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

### Analysis and conclusion

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.



#Q.69 Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932.



**Provision**

It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) It has been exercised in good faith.



The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

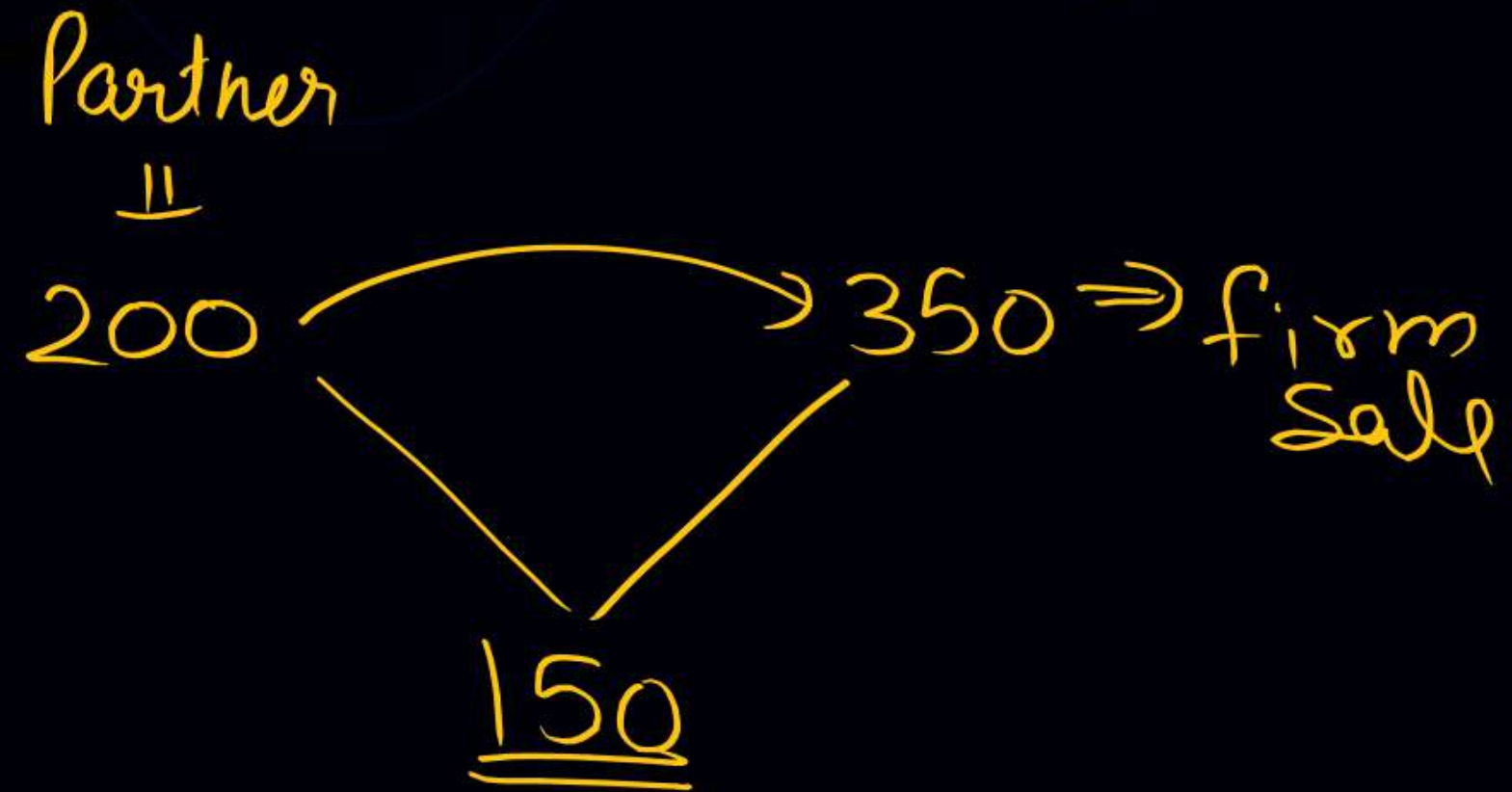
### **Analysis and conclusion**

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.



#Q.70 A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is Rs. 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for Rs. 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of Rs. 350? Assume there is no contract between the partners regarding the above.







**Provision**

According to section 16 of the Indian Partnership Act, 1932, subject to contract between 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.



### Analysis and conclusion

In the given scenario, Mr. B had sold iron bar to the firm at the current prevailing market rate of Rs. 350 per Kg though he had stock with him which he bought for Rs. 200 per Kg. Hence, he made an extra profit of Rs. 150 per Kg. This is arising purely out of transactions with the firm. Hence, Mr. B is accountable to the firm for the extra profit earned thereby



#Q.71 Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.



### Provision

Implied authority of a partner

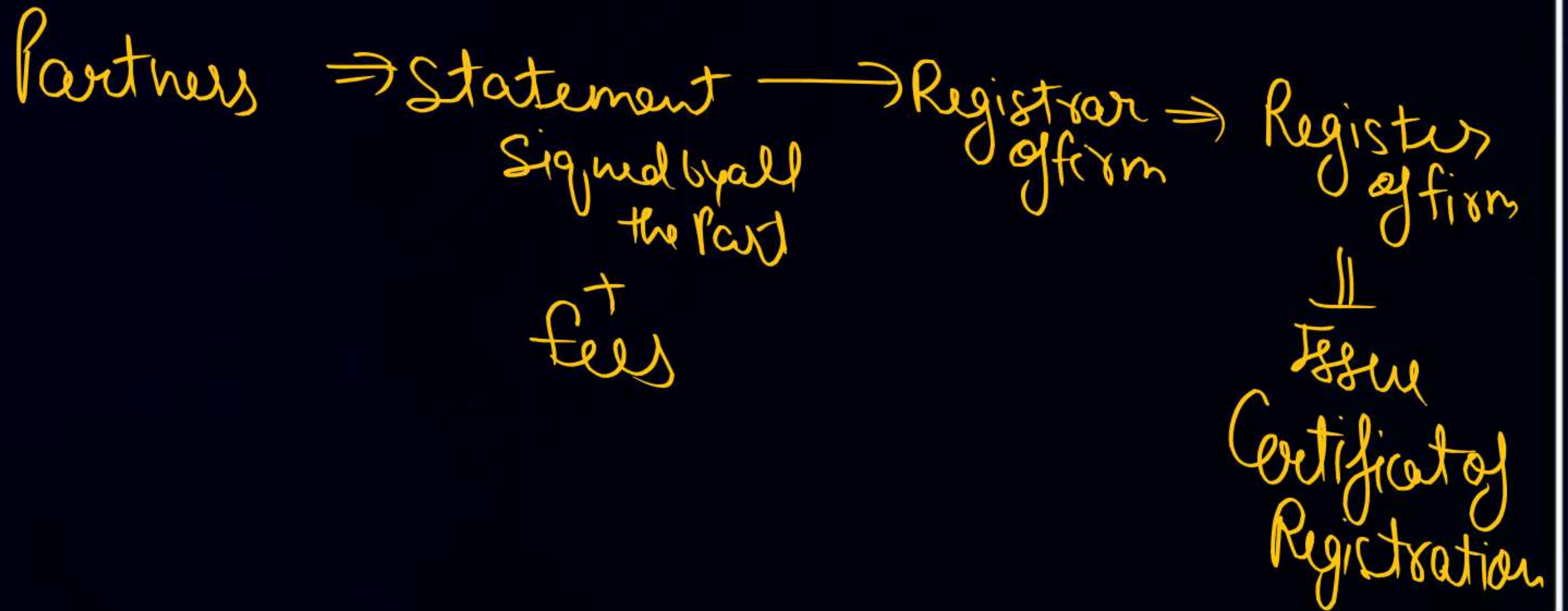
As per sections 19 and 22 of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business and is done in a usual manner.

### Analysis and conclusion

Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.



#Q.72 What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?





## 1. (SECTION 58):

1. The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-
  - a) The firm's name
  - b) The place or principal place of business of the firm,
  - c) The names of any other places where the firm carries on business,
  - d) the date when each partner joined the firm,
  - e) the names in full and permanent addresses of the partners, and
  - f) the duration of the firm.



2. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
3. Each person signing the statement shall also verify it in the manner prescribed.
4. A firm name shall not contain any of the following words, namely:-

Note: 'Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.



#Q.73 When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.



# Modes of Dissolution of Firm



## Without Court Intervention

Dissolution by Agreement (Section 40)

Dissolution by notice (in partnership at will) (Section 43)

Compulsory dissolution of firm (Section 41)

Dissolution on happening of certain contingencies (Section 42)

1. After expiry of fixed term of partnership
2. Completion of adventure/undertaking
3. Death of a partner
4. Adjudication of partner as insolvent

## With Court Intervention (Section 44)

Insanity / Unsound Mind

Permanent Incapacity

Persistent Breach of agreement

Transfer of Interest

Continuous Losses / Perpetual Losses

Just & equitable grounds

1. Deadlock in Management
2. Partners are not in talking terms
3. Loss of substratum
4. Gambling by partner on a stock exchange



Dissolution of a Firm may take place (Section 39 - 44)

- a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- d) subject to agreement between the parties, on the happening of certain contingencies, such as:
  - i. effluence of time;
  - ii. completion of the venture for which it was entered into;
  - iii. death of a partner;
  - iv. insolvency of a partner.



- e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- f) by intervention of court in case of:
  - i. a partner becoming the unsound mind;
  - ii. permanent incapacity of a partner to perform his duties as such;
  - iii. Misconduct of a partner affecting the business;
  - iv. willful or persistent breach of agreement by a partner;
  - v. transfer or sale of the whole interest of a partner;
  - vi. improbability of the business being carried on save at a loss;
- g) the court being satisfied on other equitable grounds that the firm should be dissolved.



#Q.74 Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.



### Mode of Settlement of Partnership Accounts

Losses including deficiencies of capital shall be paid

- First out of profits;
- Next out of capital
- Lastly by the partners in the proportions in profit sharing ratio

Assets must be applied in following manner:-

- Debts of the firm to 3<sup>rd</sup> parties
- To each partner what is due to him from advances
- To each partner what is due to him on account of capital
- The residue if any shall be divided among the partners in the proportion in profit sharing ratio



#Q.75 Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.

**Explain with reasons:**

- i. Whether Ram's private estate is liable for the price of the machine purchased by the firm?  $\Rightarrow$  No
- ii. Against whom can the creditor obtain a decree for the recovery of the price?



**Provision**

Partnership Liability: The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.



### Analysis and conclusion

Therefore, considering the above provisions, the problem may be answered as follows:

- i. Ram's estate in this case will not be liable for the price of the Machinery purchased. This is because there was not debt due in respect of the goods in Ram's life time.
- ii. The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners.

However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner



#Q.76 Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

- i. What are the consequences of Non-Registration of Partnership firm?
- ii. What are the rights which won't be affected by Non-Registration of Partnership firm?





Consequences of Non-Registration (Section 69)	Exceptions :- Non – Registration of firm does not, however the following rights
① <u>No suit in civil court</u> by firm or other co-partners against third party	1. <u>Right of third parties</u> to sue the firm or any partner
2. <u>No relief to firm or partner</u> for <u>set-off of claim</u>	2. <u>right of partners</u> to sue for the dissolution of the firm or for the <u>settlement</u> of the accounts of a dissolved firm, or for <u>realization</u> of the property of a dissolved firm.
3. <u>Aggrieved partner cannot partner legal action</u> against firm or other partners	3. The <u>power of an Official Assignees, Receiver of Court</u> to <u>release the property</u> of the insolvent partner and to bring an action
4. <u>Third party can sue both registered or unregistered firm</u>	4. <u>The right to sue or claim a set-off</u> if the value of suit does not exceed Rs. 100 in value
	5. <u>The right to suit and proceeding</u> instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm



- c) Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- d) Third-party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Non-registration of a firm does not, however, affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.



- c) Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- d) Third-party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Non-registration of a firm does not, however, affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.



#Q.77 A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable.

Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?



Register

Register of firm

2015	Partm ✓
A & Co.	A, B & C

2016 ⇒ Adwath

2017 ⇒ B & C

Sue

3<sup>rd</sup> p

Valid

B (& D)

Invalid

3<sup>rd</sup> Party



**Provision**

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.



**Analysis and conclusion**

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- a) the suit must be instituted by or on behalf of the firm which had been registered;
- b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.



Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.



#Q.78 M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

- a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
- b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?
- c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?



XYZ & Co  
(Unregistered firm)  
Registered firm



LMN & Co  
(Unregistered firm) ⇒ No  
⇒ No  
↓  
Registered ⇒ Yes



**Provision**

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

**Analysis and conclusion**

- a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.
- b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.
- c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.



#Q.79 MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?





**Provision**

According to Section 41 of the Indian Partnership Act, 1932, a firm is compulsorily dissolved;

- a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

However, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.



### Analysis and conclusion

Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful.

However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.



# THE COMPANIES ACT, 2013



#Q.80 Explain Doctrine of 'Indoor Management' under the Companies Act, 2013.  
Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'



Doctrine of Indoor Management (The Companies Act, 2013):

According to the “doctrine of indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are **also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.**

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. **They are fully entitled to presume regularity and compliance by the company with the internal procedures** as required by the Memorandum and the Articles.



This doctrine is a limitation of the doctrine of “constructive notice” and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

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

**a) Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.



- b) Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
- c) Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.



#Q.81 Ravi Private Limited has borrowed Rs. 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?

↓  
Amt ⇒ MOA ⇒ Pay  
↓  
Exceed ⇒ X



**Provision**

As per the facts given, Ravi Private Limited borrowed Rs. 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum.

This act of the company can be said to be null and void.

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.



### Analysis and conclusion

So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum.

Remedy available to the Mudra Finance Ltd.: The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a “public document”, it is open to public inspection. Therefore, a company which deals with the other, is deemed to know about the powers of the company.

So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.



#Q.82 (A) an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed?



**Provision**

The House of Lords in Salomon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.



In **Dinshaw Maneckjee Petit** case it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.



### Analysis and conclusion

In the instant case, the four private limited companies were formed by A, the assessee, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

Hence, A cannot be regarded as separate from the private limited companies he formed.



#Q.83 What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013.



### Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection of the environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.
- Operates under a special licence from the Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.



- On revocation, the Central Government may direct it to.
  - Converts its status and change its name
  - Wind-up
  - Amalgamate with another company having similar object.
- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders
- Relationship Committee.
- ★ A partnership firm can be a member of Section 8 company.



#Q.84 Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis., on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?



**Provision**

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate 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

**Analysis and conclusion**

Since **Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company.** Even though, Liaison was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.



#Q.85 Explain the concept of “Dormant Company” as envisaged in the Companies Act, 2013.



### 1. Dormant Company (Section 455 of the Companies Act, 2013)

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.

“Inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.



“Significant accounting transaction” means any transaction other than –

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



#Q.86 The Articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.



### Provision

According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

### Analysis and conclusion

Since, the given question is based on the above facts, accordingly here in this case **Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.**



#Q.87 Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

Directors and their relatives	190	190
Employees	15	0
Ex-employees (shares were allotted when they were <u>employees</u> )	10	0
5 couples holding shares <u>jointly</u> in the name of husband and wife (5*2)	10	5
Others	5	5

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary. 200



**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, except in case of One Person Company, limits the number of its members to two hundred.

However, 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.

It is further provided that -

- A. persons who are in the employment of the company; and
- B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.



**Analysis and conclusion**

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.

**Total Number of members**

Directors and their relatives	190
5 Couples (5*1)	5
Others	5
Total	200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.



#Q.88 Briefly explain the doctrine of "ultravires" under the Companies Act, 2013.  
What are the consequences of ultravires acts of the company?



Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further.

In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.



On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

**An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.** Sometimes, act which is ultra vires can be regularised by ratifying it subsequently.



~~#009~~ Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

- Whether Jagannath Oils Limited is required to reduce the number of members.  $\Rightarrow$  It is required to reduce 20 Members
- Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?

Not  $\leftarrow$   
required  
to reduce

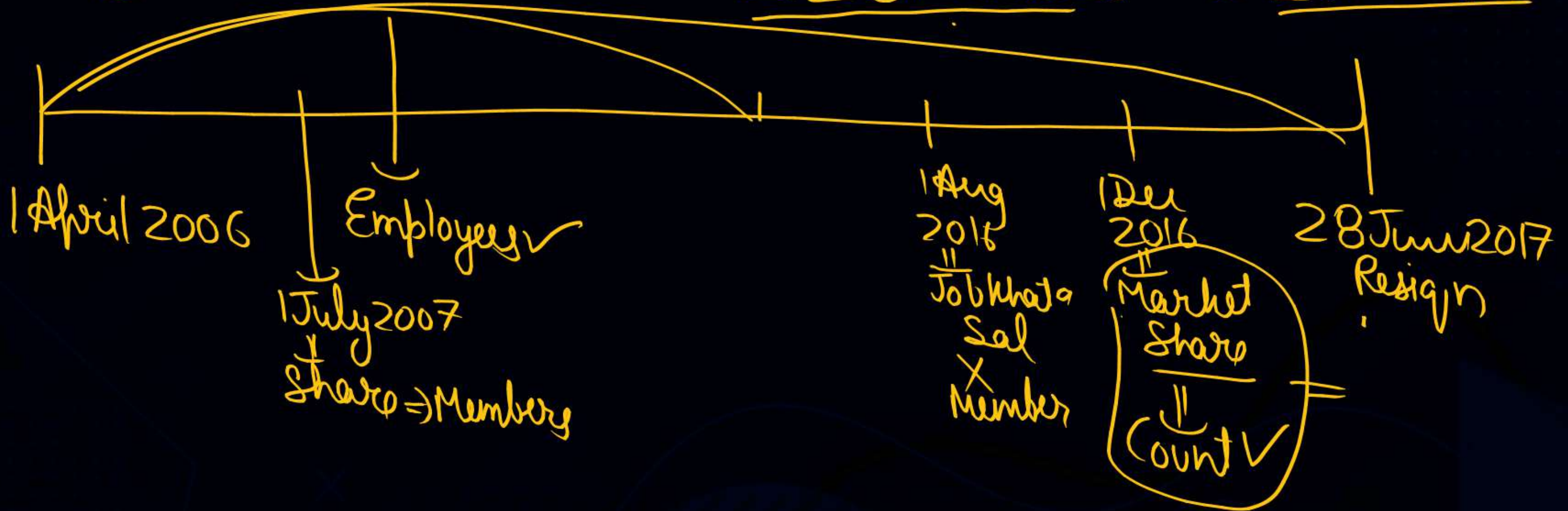


Jaganmath Oil Limited

Public Co. → Pvt Co.

220 Members ⇒ 20 Members

$\frac{220}{195} \Rightarrow \text{Not}$





**Provision**

According to Section 2(68) of Companies Act, 2013, “Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- i. restricts the right to transfer its shares;
- ii. except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- a) persons who are in the employment of the company; and



- b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- iii. prohibits any invitation to the public to subscribe for any securities of the company;

### **Analysis and conclusion**

- a) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members.



The company is required to reduce the number of members before converting it into a private company.

- b) on the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this subsection will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.



#Q.90 A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards.

However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.

Discuss what powers can be exercised by the central government against ABC club, in such a case?



Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

Since ABC Club was a Section 8 company and it was observed on 30<sup>th</sup> September, 2019 that it had started violating the objects of its objective clause. Hence in such a situation the following powers can be exercised by the Central Government:

The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.



But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.



Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.



#Q.91 ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

↳ Perpetual Succession



**Provision**

Death of all members of a Private Limited Company, Under the Companies Act, 2013: The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.



**Analysis and conclusion**

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called “transmission of shares”. The company will cease to exist only when it is wound up by a due process of law.



#Q.92 What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.

Or

Explain the meaning of Guarantee Company? State the similarities and dissimilarities between a 'Guarantee Company' and 'Company Limited by Shares'



Meaning of Guarantee Company: Section 2(21) of the Companies Act, 2013 defines a Company Limited by Guarantee as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Thus, the liability of the members of a guarantee company is limited to a stipulated amount in terms of individual guarantees given by members and mentioned in the memorandum. The members cannot be called upon to contribute more than such stipulated amount for which each member has given a guarantee in the memorandum of association.



Similarities and dis-similarities between the Guarantee Company and the Company limited by shares: The common features between a “guarantee company” and the “company limited share” are legal entity and limited liability. In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them. Both these type of companies have to state this fact in their memorandum that the members’ liability is limited.

However, the dissimilarities between a ‘guarantee company’ and ‘company limited by shares’ is that in the former case the members will be called upon to discharge their liability only after commencement of the winding up of the company and only to the extent of amounts guaranteed by them respectively; whereas in the case of a company limited by shares, the members may be called upon to discharge their liability at any time, either during the life of the company or during the course of its winding Up.



#Q.93 Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company.

Analyse the situation and decide whether Mr. X is free from his liability.



**Provision**

**Doctrine of Indoor Management:** The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.



**Analysis and conclusion**

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.



#Q.94 What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 2013? What are the effects of registration of a company?



Under section 7(2) the Registrar shall on the basis of documents and information filed for the formation of a company, shall register all the documents and information and issue a certificate that the company is incorporated in the prescribed form to the effect that the proposed company is incorporated under this Act.

The company becomes a legal entity from the date mentioned in the certificate of incorporation and continues to be so till it is wound up.



### **Effects of registration of a company**

Section 9 of the Companies Act, 2013 provides that, from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued by the said name. Accordingly, when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow:



- a) the company becomes a distinct legal entity. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name.
- b) it acquires a life of perpetual existence by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up.

Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company as and when declared either as dividend or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders



#Q.95 FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.

Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013.



- i. As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.

Hence, the order of NCLT will be legal.

Precautions: Before making any order,—

- a) the company shall be given a reasonable opportunity of being heard in the matter; and
- b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.



*partnership*

# THE LIMITED LIABILITY ACT, 2008

— ↘



**Q96 Explain the advantages of LLP. (IMP)**

- LLP is organized and operates on the basis of an agreement
- LLP provides flexibility without imposing detailed legal and procedural requirements
- LLP is easy to form
- All partners of LLP enjoy limited liability LLP has flexible capital structure
- LLP is easy to dissolve





Q97 LLP gives the benefits of limited liability of a company and the flexibility of a partnership. Comment

LLP has benefits of both Company and Partnership firm:-

The lawmakers envisaged the need for bringing out a new legislation for creation of the Limited Liability Partnership to meet with the contemporary growth of the Indian economy.

A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand. In order to enable professional expertise and entrepreneurial initiative and combine, organize and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.



### Q98 Define Small Limited Liability Partnership.

“Small limited liability partnership [Section 2(ta)]: It means a limited liability partnership—

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

Small  
LLP

Cont<sup>n</sup> ⇒ Max 25 lakh  
&  
T/O ⇒ Max<sup>m</sup> 40 lakh

PUSC ⇒ Max<sup>m</sup> 4 cr.  
Small Co = T/O ⇒ Max<sup>m</sup> 40 cr.





### Q99 Explain the circumstances in which LLP may be wound up by Tribunal ? (IMP)

**Circumstances in which LLP may be wound up by Tribunal (Section 64):** A LLP may be wound up by the Tribunal:

if the LLP decides that LLP be wound up by the Tribunal;

for a period of more than six months, the number of partners of the LLP is reduced below two;

if the LLP is unable to pay its debts;

if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

**Rules for winding up and dissolution (Section 65):** The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.





Q100 State the circumstances under which a LLP & its partners may face unlimited liability ?(IMP)

Unlimited liability in case of fraud (Section 30):

In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners,
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose

shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.



## Important Points –

1. Paper can be lengthy so manage speed accordingly
2. Some Questions will be new but concept is already taught in class so apply the concept the answer the same accordingly
3. Don't get stuck on one question
4. Even if you see questions which you are unable to answer, don't lose confidence find those questions which you can already know

$1 \text{ hr} \Rightarrow 40 \text{ Marks} \quad | \Rightarrow 30 \text{ M}$   
 $2 \text{ hr} \Rightarrow 40 \text{ Marks} \quad | \Rightarrow 30 \text{ M}$   
 $3 \text{ hr} \Rightarrow 20 \text{ Marks} \quad | \Rightarrow 30$

100 Marks  $\Rightarrow$  20 Marks

↓  
80 Marks





**THANK**  
*You*