Chapter 1 Indian Regulatory Framework

Question 1 (Study Material)

What is Law?

Answer: Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

Question 2 (Study Material)

What is the process of making Law?

Answer: When a law is proposed in parliament it is called a Bill. After discussion and debate, the law is passed in Lok Sabha. Thereafter, it has to be passed in Rajya Sabha. It then has to obtain the assent of the President of India. Finally, the law will be notified by the Government in the publication called the Official Gazette of India. The law will become applicable from the date mentioned in the notification as the effective date. Once it is notified and effective, it is called an Act of Parliament.

Question 3 (Study Material)

What are different types of Laws in Indian Legal System?

Answer: The laws in the Indian legal system could be broadly classified as follows:

(a) Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

(b) Civil Law Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. Some examples of civil offences are breach of contract, non-delivery of goods.

(c) Common Law A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution.

(d) Principles of Natural Justice Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law. Nemo judex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally

meaning "hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

Question 4 **(Study Material)**

Explain Role of SEBI?

Answer: The Securities and Exchange Board of India (SEBI)

•is the regulatory body

• for securities and commodity market in India

• under the ownership of Ministry of Finance within the Government of India.

• It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

Question 5 **(Study Material)**

Explain functions of RBI?

Answer: Reserve Bank of India-

•is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.

•It is under the ownership of Ministry of Finance, Government of India.

• It is responsible for the control, issue and maintaining supply of the Indian rupee.

• It also manages the country's main payment systems and works to promote its economic development.

• Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).

•RBI established the National Payments Corporation of India as one of its specialised divisions to regulate the payment and settlement systems in India.

•Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised divisions for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

Question 6 **(Study Material)**

Explain in brief structure of Indian Judicial System?

Answer: When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary. The functions of judiciary system of India are:

♦ Regulation of the interpretation of the Acts and Codes,

♦ Dispute Resolution,

♦ Promotion of fairness among the citizens of the land.

Chapter 2 The Indian Contract Act, 1872

Unit 1: Nature Of Contract

Question 1 **(Study Material)**

"All contracts are agreements, but all agreements are not contracts". Comment.

Answer: An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and not intend to create a legal relationship, it is they do not a contract.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements. Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

Question 2 **(Study Material)**

A sends an offer to B to sell his second-car for ₹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?

Answer: Acceptance to an offer 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. 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.

Question 3 **(Study Material/ Rtp Nov 2018, Mtp 1 Dec 2022)**

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

Answer: (i) It is an implied contract and A must pay for the services of the coolie detailed by him.

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.

Question 4 **(Study Material)**

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.

Answer: 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. 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.

Question 5 **(Study Material)**

State whether there is any contract in following cases:

(a) A engages B to do certain work and remuneration to be paid as fixed by C.

(b) A and B promise to pay for the studies of their maid's son

(c) A takes a seat in public bus.

(d) A, a chartered accountant promises to help his friend to file his return.

Answer: (a) It is a valid express contract

(b) It is not a contract as it is a social agreement

(c) It is an implied contract. A is bound to pay for the bus fare.

(d) It is a social agreement without any intention to create a legal relationship.

Question 6 **(Study Material)**

Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages?

Answer: No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him.

In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract.

Question 7 **(Past Paper July 2021)**

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.

(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.
(iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
(iv) X, a physician and surgeon, employs Y as an assistant on a salary of ₹75,000 per month for at term of two years and Y agrees not to practice as a surgeon and physician during these two years.

Answer: (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.
Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

(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.

Question 8 **(Past Paper Nov 2018)**

Mr. Ramesh promised to pay ₹50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to

file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

Answer: Provision: Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are no enforceable in court of law and hence they do not result into contracts.
Facts of the case: Mr. Ramesh promised to pay ₹50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh.
Conclusion: In the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

Question 9 **(Past Paper Nov 2018)**

A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand- over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

Answer: Provision: [Indian Contract Act, 1872]: The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention in to a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. 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.
Facts of case: In above case Ms. Lovely looked at a price tag of 2000 for a pair of dress after a shop. She rushed to shop-keeper for purchase the same but the shop-keeper refused to hand over the dress to Ms. Lovely.
Conclusion: 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.
In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the

shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Question 10 **(Mtp May 2018, Past Paper Nov 2018, Mtp1 Nov 2018)**

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

Answer: Modes of revocation of Offer

(i) By notice of revocation

(ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified where no time is specified, then within a reasonable time. Where the acceptor fails to fulfil a condition precedent to time and

(iii) By non-fulfilment of condition precedent: Where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked.

By death or insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor

(iv) By counter offer

(v) By the non- acceptance of the offer according to the prescribed or usual mode

(vi) By subsequent illegality.

Question 11 **(Past Paper Jan 2021)**

Mr. B makes a proposal to Mr. S by post to sell his house for ₹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?

Answer:(i) 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.

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) 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.

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 any-time 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.

Question 12 **(Past Paper Jan 2021)**

Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.

Answer: Definition of Acceptance: In terms of Section 2(b) of the Indian Contract Act, 1872 the term acceptance is defined as "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Legal Rules regarding a valid acceptance:

(1) Acceptance can be given only by the person to whom offer is made. In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.

(2) Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

(3) The acceptance must be communicated: To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.

(4) Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

(5) Time: Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.

(6) Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

(7) Acceptance by conduct/ Implied Acceptance: Section 8 of the Act lays down that the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e., verbal or written communication. Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

Question 13 **(Rtp Nov 2018)**

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

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

Question 14 **(Rtp Nov 2018)**
Rama swami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following:
(a) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
(b) The telegram of revocation and letter of acceptance both reached together

Answer: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the

communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.
An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.
Referring to the above provisions:
(a) Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
(b) If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Question 15 **(Rtp May 2018)**

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

Answer: Provision: Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.
Fact of the case: In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.
Conclusion: Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

Question 16 **(Rtp June 2023)**

Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth 1,00,000 to Rohit for a sum of 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the

whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872?

Answer: Provision: Section 27 of the Indian Contract Act, 1872 provides that any agreement that restrains a person from carrying on a lawful trade, profession or business is void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. **The restraint as to sale of goodwill would be a valid restraint provided-**

(i) Where the restraint is to refrain from carrying on a similar business

(ii) The restrain should be within the specified local limits

(iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price.

(iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

Fact of the case: In the given case, Rohan has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However, the restriction imposed on Rohan is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement.

Conclusion: Therefore, Rohit cannot take any legal action against Rohan as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between Rohan and Rohit in restraint of trade is void agreement.

Question 18. **(Mtp1 Dec 2022)**

Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer: Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. 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, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

(i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
(ii) The registrar shall on application register such person or association of persons as a company under this section.
(iii) On registration, the company shall enjoy same privileges and obligations as of a limited company.

Question 19. **(Mtp1 June 2023)**

Ashwin goes to the supermarket to buy an Air Conditioner. He selects a branded Air Conditioner having a price tag of 40,000 after a discount of 3000. Ashwin reaches the cash counter to make the payment, but the cashier says, "Sorry sir, the discount was up to yesterday. There is no discount from today. Hence you have to pay ₹43,000." Ashwin got angry and insisted for 40,000. State with reasons whether under Indian Contract Act, 1872, Ashwin can enforce the cashier to sell at discounted price i.e., 40,000.

Answer: **Provision:** An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspapers for sale are not offered. These are merely invitations to the public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.
Fact of the case: In the instant case, Ashwin reaches the super market and selects an Air Conditioner with a discounted price tag of ₹40,000 but the cashier refuses to sell at discounted price by saying that the discount is closed from today and requests to make full payment. But Ashwin insists on purchasing it at a discounted price. On the basis of above provisions and facts, the price tag with Air Conditioner was not offered. It is merely an invitation to offer. Hence, it is Ashwin who is making the offer, not the supermarket. Cashier has the right to reject Ashwin's offer.
Conclusion: Therefore, Ashwin cannot enforce cashier to sell at discounted price.

Question 20. **(Rtp June 2023)**

State which of the following agreements are valid contracts under the Indian Contract Act, 1872?
(a) A, who owns two cars, is selling red cars to B. B thinks he is purchasing the black car.
(b) A threatened to shoot B if he (B) did not lend him *2,00,000 and B agreed to it.

(c) A agrees to sell his house to B for 100 kgs of cocaine (drugs).
(d) A asks B if he wants to buy his bike for 50,000. B agrees to buy a bike.
(e) Mr. X agrees to write a book with a publisher. But after a few days, X dies in an accident.

Answer: (a) A, who owns two cars, is selling red cars to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.
(b) A threatened to shoot B if he (B) did not lend him 2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.
(c) A agrees to sell his house to B for 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.
(d) A asks B if he wants to buy his bike for 50,000. B agrees to buy a bike. It is an agreement which is enforceable by law. Hence, it is a valid contract.
(e) Mr. X agrees to write a book with a publisher. But after a few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Chapter 2 The Indian Contract Act, 1872

Unit 2: Consideration

Question 1 (Study Material, Mtp1 Nov 2018, Mtp1 Nov 2022)

"To form a valid contract, consideration must be adequate". Comment

Answer: The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced **(Bolton v. Modden)**. Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Question 2 (Study Material)

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 for 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, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 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?

Answer: Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary

that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the **Chinnaya Vs. Ramayya**, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. 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.

Question 3 **(Rtp Nov 18,Past Paper Nov 2019,Mtp May 2023)**
Define consideration. State the characteristics of a valid consideration.

Answer: Definition of Consideration-Section 2(d): "When at the desire of the promisor, the promise or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise"
The essential characteristics of a valid consideration are as follows:
a. Consideration must move at the desire of the promisor.
b. It may proceed from the promisee or any other person on his behalf.
c. It may be executed or executory. It may be past, present or future.
d. It must be real and have some value in the eyes of law.
e. It must not be something which the promisor is already legally bound to do.
f. It must not be unlawful, immoral or opposed to public policy.
g. Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.

h. It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

Question 4 (Past Paper May 2018, Past Paper Jan 2021, Past Paper May2022)
"No consideration, no contract" Comment.
Answer: No consideration, no contract: Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility.
Example: A promises to pay ₹100 to B. This promise cannot be enforced by B because he is not giving anything to A for this promise. **No consideration, no contract is a general rule**. However, **Section 25** of the Indian Contract Act provides some exceptions to this rule, where **an agreement without consideration will be valid and binding**.

These exceptions are as follows:
(1) Natural Love & Affection [Section 25 (1)]: Where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in near relation to each other, the agreement is enforceable, even though the consideration is absent.

(2) Compensation for past voluntary service [Section 25 (2)]: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

(3) Promise to pay time barred Debt [Section 25 (3)]: The agreement is valid provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf.

(4) Completed Gift – [Explanation 1 to Section 25]: As per explanation 1 to section 25, nothing in section 25 shall affect the validity as between donor and done, on any gift actually made. Thus, gifts do not require any consideration.

(5) Agency (Section 185): No consideration is necessary to create an agency.

(6) Bailment (Section 148): No consideration is required to affect the contract of bailment.

(7) Charity: If a promise undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

Question 5 **(Past Paper Dec 2020)**

In light of provisions of the Indian Contract Act, 1872 answer the following: Mr. Y given loan to Mr. G of ₹30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law

Answer: Provision: Promise to pay time-barred debts - Section 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration.

Fact of the case: In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Conclusion: Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties' post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above-mentioned conditions of section 25 (3) are fulfilled.

Question 6 **(Past Paper May 2019)**

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 for ₹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 life. 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?

Answer: Provision of The Indian Contract Act, 1872: Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs.

Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

Facts of the case: 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.

Conclusion: 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.

Question 7 **(Past Paper Nov 2022)**

Explain the following statements in the light of provisions of Indian Contract Act, 1872:

(i) "Agreements made out of love and affection are valid agreements."

(ii) "Promise to pay a time barred debt cannot be enforced."

Answer: (i) Agreements made out of love and affection are valid agreements: A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

(A) It must be made out of natural love and affection between the parties.

(B) Parties must stand in near relationship to each other.

(C) It must be in writing.

(D) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

(ii) Promise to pay a time barred debt cannot be enforced: According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed

by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration. Hence, this statement is not correct.

Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

Question 8 **(Rtp Nov 2018)**

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

Answer: Provision: [Section 2(d) of Indian Contract Act, 1872]

The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor. If an action is initiated at the desire of the third-party, it is not a consideration. If you look at the definition of consideration according to section 2 (d) of the Indian Contract Act. 1872, it explicitly states the phrase 'promisee or any other person.' This essentially means that in India, consideration may move from the promise to any other person. However, it is important to note that there can be a stranger to consideration but not a stranger to the contract.

Facts of Case: In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to the enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further, the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously, therefore they should be regarded as one transaction, and there was sufficient consideration for it.

Conclusion: Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

Question 9 **(Rtp May 2018)**

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

Answer: Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. Thus, the concept of stranger to consideration is valid and is different from stranger to a contract. The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions.

In other words, even a stranger to a contract may enforce a claim in the following cases:

(1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

(2) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

(3) In the case of certain marriage contracts, expenses made on the partition of the Hindu a female member can enforce a provision for marriage Undivided Family.

(4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.

(5) Acknowledgement or estoppel – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

(6) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

(7) Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Question 10 **(Mtp1 Nov 2022)**

Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly

registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

Answer: Provision: Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

Fact of the case: In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered.

Conclusion: Hence, this transfer is not enforceable and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

Chapter 2 The Indian Contract Act, 1872

unit-3: other essential elements of a contract

Question 1 **(Study Material)**

1. "An agreement, the meaning of which is not certain, is void". Discuss.

Answer: Agreement - the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

Question 2 **(Study Material)**

2. "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.

Answer: 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. Thus, 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).

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

Question 3 **(Study Material, Rtp May 2018, Rtp Dec 2022)**

3. A student was induced by his teacher to sell his brand-new car to the later at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher?

Answer: Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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

A person is deemed to be in position to dominate the will of another:
(a) Where he holds a real or apparent authority over the other; or
(b) Where he stands in a fiduciary relationship to the other; or
(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.
A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Question 4 **(Study Material)**

4. Explain the concept of 'misrepresentation' in matters of contract. 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 few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract?

Answer: Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:
1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.
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. 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.

Question 5 **(Study Material, Mtp1 Nov 2018)**

5. Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ` 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took

delivery of the car by paying ` 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT 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. CHHOTU can rescind the contract in the above ground.

Answer: 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.

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

Question 6 (Study Material, Mtp May 2018, Past Paper Dec 2021)

6. Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ` 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ` 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872.

Answer: According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries

supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

Question 7 **(Past Paper May 2019)**

Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act, 1872?

Answer: Mere silence is not fraud 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.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract. The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Silence is fraud:

1. Duty of person to speak: Where the circumstances of the case are such that it is the duty of the person observing silence to speak.

Following contracts come within this category:

(a) Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

(b) Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

(c) Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.

(d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

(e) Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

2. Where the silence itself is equivalent to speech: Example: A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

Question 8 **(Past Paper May 2018)**

Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872?

Ans: Definition of Fraud under Section 17: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent.
Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e., let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud.
Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Question 9 **(Mtp May 2018, Rtp Nov 2018)**

"Mere silence does not amount to fraud". Discuss.
Answer: Mere silence not amounting to fraud: Mere silence as to facts likely to faucet the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.
It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract. The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to faucet the willingness of a person to enter into a contract is not fraud.
Exceptions to this rule:

→Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g., Insurance Contract).
→Where the silence is, in itself, equivalent to speech.

Question 10 **(Rtp May 2018)**

"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.

Answer: 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. Thus, 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).
Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

Question 11 **(Past Paper May 2019)**

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

Answer: The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:
(1) Relation between the parties: A person can be influenced by the other when a near relation between the two exists.
(2) Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other.
A person is deemed to be in such position in the following circumstances:
(a) Real and apparent authority: Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
(b) Fiduciary relationship: Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.
(c) Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

(d) Unconscionable bargains: Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.

(3) The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

(4) Burden of proof: The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Question 12 (Mtp2 Nov 2022)

X aged 16 years borrowed a loan of ₹50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.

Answer: 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.

Fact of the case: 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.

Conclusion: Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

Question 13 (Rtp May 2018, Mtp2 Nov 2018, Past Paper Nov 2019)

Explain the term 'Coercion" and what are the effects of coercion under Indian Contract Act, 1872.

Answer: Coercion (Section 15 of the Indian Contract Act, 1872): "Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the

prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

Effects of coercion under section 19 of Indian Contract Act, 1872

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.

(iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Question 14 **(Past Paper May 2022)**

Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting ₹60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her. She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?

(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?

(iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity?

Answer: A contract made with or by a minor is void ab-initio: Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

(i) By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.

(ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an

agent for parents. In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.

(iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified. Hence, in this case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

Question 15 **(Mtp2 Nov 2018)**

Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.

Answer: Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour v. Balfour. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs. 1 lakh from father for the reasons explained above.

Question 16 **(Past Paper Dec 2020)**

Mr. X a businessman has been fighting a long-drawn litigation with Mr. Y an industrialist. To support his legal campaign, he enlists the services of Mr. C a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y. Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872?

Answer: Provision: The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law

declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

Fact of the case: The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872.

Conclusion: Hence, Mr. C in the given case cannot recover the amount of ₹10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

Question 17 (Past Paper Dec 2020)

Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.

Answer: Definition of Fraud under Section 17 of the Indian Contract Act, 1872: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

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

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

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

(4) any other act fitted to deceive;

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

As per Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.

Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the Contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

Question 18 **(Past Paper Jan 2021)**

Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

Answer: Provision: Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void. The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

Fact of the case: In the given case, Mr. S, who was going to be retired after two years was proposed by Mr. D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that Mr. D offered Mr. S a sum of ₹10 lakh as consideration. Mr. S refused initially but later accepted the said offer to receive money to retire from his office.

Conclusion: Mr. S's promise of sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay ₹10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid.

It is void, as the consideration being opposed to public policy, is unlawful.

Question 19 **(Past Paper May 2018, Past Paper Dec 2020)**

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

Answer: Distinction between Wagering Agreement and Contract of Insurance

Basis of difference	Wagering Agreement	Contract of Insurance
Meaning	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.	It is a contract to indemnify the loss.
Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of the insurance contract is the mutual consideration (premium and compensation amount).
Insurable Interest	There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has an insurable interest in the life or property sought to be insured.
Contract of Indemnity	Loser has to pay the fixed amount on the happening of an uncertain event.	Except for life insurance, the contract of insurance indemnifies the insured person against loss
Enforceability	It is void and unenforceable agreement.	It is valid and enforceable
Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
Public Welfare	They have been regarded as against the public welfare.	They are beneficial to the society.

Question 20 **(Rtp Dec 2022)**

Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid ₹20,000 for that table. Later on, it was found that one leg of table is broken, and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872.

Answer: Provision: As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other

party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed.

Fact of the case: In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X.

Conclusion: On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

Question 21 (Mtp1 May 2023)

Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract.

Answer: Provision: Section 10 of Indian Contract Act, 1872 laid done the essential elements of a valid contract. One of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarify" two or more persons are said to consent when they agree upon the same thing in the same sense".

Fact of the case: In the present case, both the parties have given a free consent but they are not consenting for the same thing in the same sense. Mr. Joy wants to sell flat no. 101 and Mr. Roy has agreed the contract thinking that it's flat no. 102.

Conclusion: Hence, the agreement would be invalidated at the inception (beginning) stage itself because both the parties did not agree about a thing (sale of flat) in the same sense. Hence, both the parties did not have mutual consent for the contract; therefore, it is not a valid contract.

Question 22 (Mtp2 May 2023)

Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid Rs. 20,000 for that table. Later on, it was found that one leg of table is broken and Mr. X has pasted the wood and tried to

hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872?

Answer: As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed. In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). If the aggrieved party has obtained some benefits in such a contract (caused by fraud), then all such benefits should be restored or returned back. And if aggrieved party has suffered any losses, it should be compensated by the other party. On the basis of above provisions and facts of the case, in case a fraud is committed by one party, the contract becomes voidable at the option of the aggrieved party. Hence, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

Chapter 2 The Indian Contract Act, 1872

Unit–4: Performance of Contract

Question 1 **(Study Material)**

X, Y and Z jointly borrowed 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:
(i) Y can recover the contribution from X and Z,
(ii) Legal representatives of X are liable in case of death of X,
(iii) Y can recover the contribution from the assets, in case Z becomes insolvent.

Answer: Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfil the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that 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.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

(i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.

(ii) Legal representative of X is liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.

(iii) Y also can recover the contribution from Z's assets.

Question 2 **(Study Material, Past Paper May 2019)**

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for 50,000 as full advance payment for the above creative work. Mr. C clarified

that the painting shall be completed in 10 sittings and shall take 3 months. On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

Answer: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

(i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.

(ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

Question 3 **(Study Material, Mtp1 Nov 2018)**

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

Answer: In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Referring to the above provision, we can analyse the situation as under.

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car.

Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.

Question 4 **(Study Material)**

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2022.

(i) 12,120 which was due in May 2018.

(ii) 5,650 which was due in August 2020

(iii) 9,680 which was due in May 2021.

Mr. Murari made payment on 1st April 2022 as below without any notice of how to appropriate them:

(i) A cheque of 9,680

(ii) A cheque of 15,000 Advice under the provisions of the Indian Contract Act, 1872.

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

In the present case, Mr. 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 9,680 will be appropriated against the bill of 9,680 which was due in May 2019.

Cheque of 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 12,120 which was due in 2016 and balance against 5650 which was due in August 2018.

Question 5 **(Study Material, Rtp Dec 2022)**

What will be rights with the promisor in following cases? Explain with reasons:

(a) Mr. X promised to bring back Mr. Y to life again.

(b) An agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached A on 19th March.

(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.

(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.

Answer: (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.

Question 6 **(Past Paper July 2021)**

X, Y and Z jointly borrowed ₹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 ₹90,000?

(ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹90,000, if X, Y and Z died?

(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?

Answer: (i) Yes, L can compel only Y to pay ₹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 fulfil 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 ₹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 ₹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.

Question 7 **(Past Paper May 2018, Rtp Nov 2018)**

X, Y and Z are partners in a firm. They jointly promised to pay Rs 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z.

Ans: Provision: [Section 43 Indian Contract Act, 1872]

1. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any 1[one or more] of such joint promisors to perform the whole of the promise.
2. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Facts of Case: In the instant case, X, Y and Z jointly promised to pay Rs 3, 00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount.

Conclusion: In the instant case, X, Y and Z jointly promised to pay Rs.3,00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive ` 20,000 from Y's estate, and Rs.1,40,000 from Z.

Question 8 **(Past Paper Nov 2018,Mtp1 May 2023)**

Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹50,000 towards advance as per the terms of the above contract. The mode

of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹50.000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

Ans: Provision: Subsequent or Supervening impossibility (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. Example: change in law etc.

Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Fact of the case: In the given question, after Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of ₹50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time.

Conclusion: Hence, the contention of Mr. Y is correct.

Question 9 **(Past Paper Nov 2019)**

Mr. Sonumal a wealthy individual provided a loan of ₹80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹1,00,000 on 28.02.2019 and remaining ₹50,000 on 03.03.2019. On 10.03.2019 Mr. Datumal while paying off part ₹75,000 to Mr. Sonumal insisted that the lender should adjusted ₹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: Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

Ans: 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) 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. Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.

(ii) 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.
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) 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.
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.

Question 10 **(Mtp May 2018)**

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

Answer: Discharge of a Contract: A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

(1) Discharge by performance which may be actual performance or attempted performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

(2) Discharge by mutual agreement: Section 62 of the Indian Contract Act,

1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.

(3) Discharge by impossibility of performance: The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to

(a) unforeseen change in law

(b) The destruction of subject matter

(c) The non-existence or non- occurrence of particular state of things

(d) the declaration of war.

(4) Discharge by lapse of time: A contract should be performed within a specific period as prescribed in the Law of Limitation Act, 1963. If it is not performed the party is deprived of remedy at law. Discharge by operation of law: It may occur by death of the promisor, by insolvency etc.

(5) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach.

(6) A promise 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 he thinks fit. In other words, a contract may be discharged by remission.

(7) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal.

Question 11 **(Rtp May 2018)**

X received certain goods from Y and promised to pay ₹60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays ₹40,000 to Y on behalf of X. however, X was not aware of the payment. Now Y is intending to sue X for the amount of ₹60,000. Can Y do so? Advise.

Answer: As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. Therefore, in the instant case, Y can sue X only for the balance amount i.e., ₹20,000 and not

for the whole amount.

Question 12 **(Past Paper Dec 2021, Mtp2 Nov 2022)**

A, B, C and D are the four partners in a firm. They jointly promised to pay ₹6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ₹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.

Answer: Provision: Joint promisors (Section 42 of the Indian Contract Act, 1872) When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43)

As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

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

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

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

From D ₹2,75,000= (D's Liability ₹1,50,000+1/2 of liability of B (Loss) (1,50,000*1/2) i.e., ₹75,000+1/2 of C's liability (Loss) (1,00,000*1/2) i.e., ₹50,000) In other words, equal proportion i.e., ₹5,50,000 (i.e., ₹6,00,000 - ₹50,000) / 2.

Conclusion: Thus, total amount A can receive from C and D comes to ₹3,25,000 (50,000+2,75,000).

Question 13 **(Past Paper Dec 2021, Mtp2 Nov 2022)**

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

Answer: 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 recission. 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.

(vi) Neglect of promisee: If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67).

Question 14 **(Past Paper Dec 2021, Mtp2 Nov 2022)**

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.

Answer: 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.

Fact of the case: 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.

Conclusion: Hence, K cannot file a suit against J for performance of the contract.

Question 15 **(Past Paper July 2021, Mtp2 Nov 2022)**

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?

Answer: According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the **two types**, namely
(a) initial impossibility, and (b) subsequent 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.

Question 16 **(Past Paper Dec 2020)**

In light of provisions of the Indian Contract Act, 1872 answer the following: Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

Answer: Provision: As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promises is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.
Fact of the case: Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods. F Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr.

Conclusion: R since payment was not made by him at the time of delivery of goods.

Question 17 **(Mtp2 Nov 2018)**

Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872.

Answer: As per section 40 of the Indian Contract Act, 1872, the promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

(i) Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

(ii) Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

(iii) Legal Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

(iv) Third persons: As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

(v) Joint promisors: When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

Unit 5: Breach Of Contract and Its Remedies

Question 1 **(Study Material, Rtp Nov 2018,Mtp1 May 2023)**

"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. **(7 Marks)**

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

(1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or

(2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Question 2 **(Study Material, Past Paper May 2022)**

"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain. **(5 Marks)**

Answer: Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to

between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high. Sri Chunni Lal vs. Mehta & Sons Ltd (Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then, the court has powers to reduce the amount if it considers it reasonable to reduce.

Question 3 **(Study Material, Mtp May 2018, Mtp2 Nov 2018)**

'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. **(6 Marks)**

Answer: Breach of Contract-Damages: Section 73 of the Indian Contract Act, 1872 lays down 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.

The leading case on this point is "Hadley vs. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' 500/- at the rate of 0.50 paise i.e., 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'. If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be 750/- (i.e., 1000 water bottles x 0.75 paise).

Question 4 **(Study Material, Mtp1 Nov 2018, Past Paper May 2018)**

M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract, which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation, which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

(6 Marks)

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

the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ₹1.25 lakh (i.e., ₹12.75 minus ₹11.50 = ₹1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date. Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise, M Ltd is not liable.

Question 5 **(Study Material, Past Paper May 2022)**

Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ₹10,000 per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

(i) Whether the management of Shital Vidya Mandir has right to terminate the contract?

(ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?

(iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases? **(4 Marks)**

Answer: Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract. Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.
(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

Question 6 **(Study Material, Past Paper Dec 2020)**

In light of provisions of the Indian Contract Act, 1872 answer the following: 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? (2 Marks)

Answer: 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.
Fact of the case: 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.
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.

Question 7 **(Study Material, Rtp Dec 2022)**

Given the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

Answer: Vindicative or Exemplary damages
These damages may be awarded only in two cases:
(a) for breach of promise to marry because it causes injury to his or her feelings; and
(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.
A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (Gibbons v West Minister Bank).

Chapter 2 The Indian Contract Act, 1872

Unit 6: Contingent And Quasi Contracts

Question 1 **(Study Material, Past Paper Dec 2021)**

Explain the-term 'Quasi Contracts' and state their characteristics.(6 Marks)

Answer: Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are 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 a quasi-contract are:

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.
5. A suit for its breach may be filed in the same way as in case of a complete contract.

Question 2 **(Study Material)**

X, a minor was studying in M.Com. in a college. On 1st July, 2021 he took a loan of 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2021. X possesses assets worth 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. (6 Marks)

Answer: Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Question 3 **(Study Material)**

P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?

Answer: Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other. In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party P made the payment and can recover the same from D.

Question 4 **(Mtp1 Nov 2022,Mtp2 May 2023)**

What is Quasi Contract? Elaborate the cases which are deemed as Quasi Contract. **(6 Marks)**

Answer: Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are 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 following are the cases which are deemed as Quasi Contract:

(a) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

(b) Payment by an interested person (Section 69): A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(c) Obligation of person enjoying benefits of non-gratuitous act (Section 70): In term of section 70 of the Act "where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or

delivered".

(d) Responsibility of finder of goods (Section 71): '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.

(e) Money paid by mistake or under coercion (Section 72): "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

Question 5 **(Past Paper Nov 2018)**

What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. **(6 Marks)**

Answer: Provision: [Indian Contract Act, 1872]: Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events.

A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happening (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. Example: M contracts to pay N ₹20, 000 if he is elected President of a particular association. This is a contingent contract.

The essential characteristics of a contingent contract may be listed as follows:

a) There must be a contract to do or not to do something,

b) The performance of the contract must depend upon the happening or non-happening of some event.

c) The happening of the event is uncertain.

d) The even on which the performance is made to depend upon is an event collateral to the contract. i.e., it does not form part of the reciprocal promises which constitute the contract The even should neither be a performance promised, nor the consideration for the promise.

e) The contingent even should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

Question 6 **(Past Paper Nov 2019)**

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? **(4 Marks)**

Answer: 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.

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.

Chapter 2 The Indian Contract Act, 1872

Unit 7: Contract Of Indemnity And Guarantee

Question 1 **(Study Materia)**

What are the rights of the indemnity-holder when sued?

Answer: Rights of Indemnity- holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—
(a) all damages which he may be compelled to pay in any suit
(b) all costs which he may have been compelled to pay in bringing/ defending the suit and
(c) all sums which he may have paid under the terms of any compromise of suit.
It may be understood that the rights contemplated under section 125 are not exhaustive. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off.

Question 2 **(Study Materia)**

Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

Answer: Section 124 of the Indian Contract Act, 1872 states that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".
Section 126 of the Indian Contract Act, 1872 states that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default" is called a "contract of guarantee".
The conditions under which the guarantee is invalid or void is provided in section 142, 143 and 144 of the Indian Contract Act. These include:
(i) Guarantee obtained by means of misrepresentation.
(ii) Guarantee obtained by means of keeping silence as to material circumstances.
(iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

Question 3 **(Study Materia)**

Mr. X, is employed as a cashier on a monthly salary of 12,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of 10,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?

Answer: According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.
In the instant case, the creditor has made variance (i.e. change in terms) without the consent of surety. Thus, surety is discharged as to the transactions subsequent to the change.
Hence, Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary.

Question 4 (Study Materia)

A contract with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability.

Answer: According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is discharged or by any act or omission for the creditor the legal consequence of which is the discharge of the principal debtor.
In the given case, B omits to supply the necessary construction material. Hence, C is discharged from his liability.

Question 5 (Study Materia)

Mr. D was in urgent need of money amounting to 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability?

Answer: Co-sureties liable to contribute equally (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether

under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".
Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Question 6 **(Study Materia)**

Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years' contract at a monthly salary of 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's appointment.

Answer: As per the provisions of Section 133 of the Indian Contract Act, 1872, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.
In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.
Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation.

Question 7 **(Study Materia)**

A agrees to sell goods to B on the guarantee of C for the payment of the price of goods in default of B. Is the agreement of guarantee valid in each of the following alternate cases:
Case 1. If A is a Minor
Case 2: If B is a Minor
Case 3: If C is a minor.

Answer: Case 1: The agreement of guarantee is void because the creditor is incompetent t contract.
Case 2: The agreement of guarantee is valid because the capability of the principal debtor does not affect the validity of the agreement of the guarantee.
Case 3: The agreement of guarantee is void because the surety is incompetent to contract.

Question 8 **(Study Materia)**

S asks R to beat T and promises to indemnify R against the consequences. R beats T and is fined $50,000. Can R claim 50,000 from S.

Answer: R cannot claim 50,000 from S because the object of the agreement was unlawful. A contract of indemnity to be valid must fulfil all the essentials of a valid contract.

Question 9 **(Study Materia)**

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

Answer: Discharge of Surety by Revocation: As per section 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.
As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.
However, liability of Manoj for previous transactions (before revocation) i.e. for 40,000 remains. He is liable for payment of 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

Question 10 **(Study Materia)**

'C' advances to 'B, 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth 2,00,000 without knowledge of 'A'. C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability

of 'A' if the market value of furniture is worth 80,000, under the Indian Contract Act, 1872.

Answer: Surety's right to benefit of creditor's securities: According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In the instant case, C advances to B, 2,00,000 rupees on the guarantee of A. C has ₹ also taken a further security for 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. 80,000 and will remain liable for balance 1,20,000.

Chapter 2 The Indian Contract Act, 1872

Unit 8: Bailment And Pledge

Question 1 **(Study Material)**

State the essential elements of a contract of bailment.

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

(i) Delivery of goods-The essence of bailment is delivery of goods by one person to another.

(ii) Bailment is a contract-In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.

(iii) Return of goods in specific-The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.

(iv) Ownership of goods-In a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.

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

Question 2 **(Study Material)**

Give differences between Bailment and Pledge.

Answer Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

(a) As to purpose: Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. bailee takes them for repairs, safe custody etc.

(b) As to right of sale: The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.

(c) As to right of using goods: Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.

(d) Consideration: In pledge there is always a consideration whereas in a bailment there may or may not be consideration.

(e) Discharge of contract: Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Question 3 **(Study Material)**

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:
(i) V parks his car at a parking lot, locks it, and keeps the keys with himself.
(ii) Seizure of goods by customs authorities.

Answer: As per Section 148 of the Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.
(i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with V, Section 148, of the Indian Contract Act, 1872 shall not applicable.
(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Question 4 **(Study Material)**

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

Answer Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Question 5 **(Study Material)**

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

Answer: According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.

Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

Question 6 **(Study Material)**

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

Answer M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Question 7 **(Study Material)**

Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar?

Answer: According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Question 8 **(Study Material)**

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

Answer: Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

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

Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Question 9 **(Study Material)**

Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

Answer: Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.
Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

Chapter 2

The Indian Contract Act, 1872

Unit 9: Agency

Question 1 **(Study Material)**

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than 700. M sells it to D for 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Answer: According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Question 2 **(Study Material)**

State with reason whether the following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective.

Answer: Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

Question 3 **(Study Material)**

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

Answer: Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such

acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes and can decide the time, date and place of sale, not necessarily as per instructions o the Aswin, the principal, with the intention of protecting Aswin from losses.
Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Question 4 **(Study Material)**

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for 20 lakhs in the name of a nominee and then purchased it himself for 24 lakhs. He then sold the same house to Mr. Ahuja for 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

Answer: The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:
(1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
(2) claim from the agent any benefit, which may have resulted to him from the transaction.
Therefore, based on the above provisions, Mr. Ahuja is entitled to recover 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 5 **(Study Material)**

Comment on the statement 'Principal is not always bound by the acts of a sub-agent'.

Answer: The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for

the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub- agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Question 6 **(Study Material)**

ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?

Answer: To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.
In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.
Hence, Mr. Pintu must make good the loss to ABC Ltd.

Question 7 **(Study Material)**

R is the wife of P. She purchased sarees on credit from Nalli. Nalli demanded the amount from P. P refused. Nalli filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nalli would succeed.

Answer: The position of husband and wife is special and significant case of implied authority. According to the Indian Contract Act 1872, where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessaries. However, the implied authority can be challenged by the husband only in the following circumstances.
(1) The husband has expressly forbidden the wife from borrowing money or buying goods on credit.

(2) The articles purchased did not constitute necessities.
(3) Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller.
(4) The creditor had been expressly told not to give credit to the wife.

Further, where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessaries, if he does not provide for her maintenance.
Since, none of the above criteria is being fulfilled; Nalli would be successful in recovering its money.

Question 8 **(Study Material)**

Bhupendra borrowed a sum of 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful.

Answer: According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.
In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.
Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

Chapter 3 The Sale of Goods Act, 1930

Unit 1: Formation Of The Contract Of Sale

Question 1 **(Study Material)**

A agrees to buy a new TV from a shop keeper for ₹30,000 payable partly in cash of ₹20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer.

Answer: Provision: It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods.
Fact of the case: In the given case, the new TV set is agreed to be sold for ₹30,000 and the price is payable partly in exchange of old TV set and partly in cash of ₹20,000.
Conclusion: In this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

Question 2 **(Study Material)**

A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930?

Answer: In this case, B, the buyer has no right against A the seller. Section 8 of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided. This provision is based on the ground of supervening impossibility of performance which makes a contract void.
So, all the following conditions required to treat it as a void contract are fulfilled in the above case:

(i) There is an agreement to sell between A and B.
(ii) It is related to specific goods.
(iii) The goods are lost because of the sinking of ship before the property or risk passes to the buyer.
(iv) The loss of goods is not due to the fault of either party.

Question 3 **(Study Material)**

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?

Answer: 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.
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.

Question 4 **(Study Material, Mtp1 June 2023)**

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.
(ii) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.
(iii) T agrees to sell to S all the apples which will be produced in his garden this year. **(4 Marks)**

Answer: (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.'

Question 5 **(Past Paper May 2018/Rtp May 2018)**

What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery. **(4 Marks)**

Answer: 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 affected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement). Example: 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.

Question 6 **(Past Paper Nov 2018)**

Differentiate between Ascertained and Unascertained Goods with example.

(4 Marks)

Answer: Ascertained Goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.' When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Unascertained goods: The goods which are not specifically identified or ascertained at the time of making of the contract are known as 'unascertained goods'. They are indicated or defined only by description or sample.

Question 7 **(Past Paper Nov 2021)**

Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. **(6 Marks)**

Answer:

Basis	Sale	Hire Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last instalment.
Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last instalment.

Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the instalments.

Question 8 **(Past Paper May 2022)**

What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. **(4 Marks)**

Answer: (i) Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930): In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

(ii) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): 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 or becomes void.

Question 9 **(Past Paper May 2022/Mtp2 Dec 2022)**

Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid

the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles.
When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.
(i) State with reasons whether Sonal can recover the amount from the Jeweller.
(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? (6 Marks)

Answer: As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller and not a sale. Even though the payment was made by Sonal, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Sonal has right to avoid the agreement to sell and can recover the price paid.
(ii) If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even though he has to bear some expenses for repair; he cannot charge it from Sonal.

Question 10 **(Rtp May 2018)**
Describe the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.

Answer: Destruction of Goods-Consequences: In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

In a similar way Section 8 provides that an agreement to sell specific goods becomes void if 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 agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question 11 **(Mtp May 2018, Rtp June 2023)**

Explain the difference between Sale and Agreement to sell under the Sale of Goods Act, 1930. **(4 Marks)**

Answer: The differences between the sale and agreement to sell is as follows:

Basis	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract. i.e., contract for which consideration has been paid.	It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

Question 12 **(Rtp June 2023)**

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.

Answer: 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.
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.

Question 13 **(Mtp2 Nov 2018)**

Explain the term goods and other related terms under the Sale of Goods Act, 1930. **(4 Marks)**

Ans: "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7) of the Sales of Goods Act, 1930]

'Actionable claims' are claims, which can be enforced only by an action or suit, Example: debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

Chapter 3 The Sale of Goods Act, 1930

Unit 2: Conditions & Warranties

Question 1 **(Study Material, Past Paper May 2019)**

M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter.

Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers' requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

The Shop owner refused to accept return of the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".

(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

Answer: (i) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample

6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930].

Question 2 **(Study Material, Past Paper Nov 2019)**

Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930? What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

Answer: 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.

(i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of 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.

(ii) In the instant case, the buyer does not have any option available to her for grievance redressal.
(iii) In case Mrs. Geeta specified her 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, the seller will be held liable.

Question 3 **(Study Material, Rtp Nov 2018)**

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

Answer: Provision: Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)] "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

Fact of the case: In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car.

Conclusion: X is therefore entitled to reject the car and have refund of the price.

Question 4 **(Study Material)**

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

Answer: Provision: According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

Fact of the case: In the given case, Mrs. G purchased the tweed coat without informing the seller i.e., P about the sensitive nature of her skin.

Conclusion: Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach

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

Question 5 **(Past Paper May 2018)**

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.

Answer: 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 which provides that 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. 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.

Question 6 **(Study Material)**

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?

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

Question 7 **(Study Material)**

Q asked P, the seller for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, machine delivered and was found unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act,1930 discuss whether Mr. P is right in refusing to exchange the washing machine?

Answer:

According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose. Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

Question 8 **(Past Paper May 2019, Mtp2 June 2023)**

Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?

Answer: Various types of implied warranties

1. Warranty as to undisturbed possession [Section 14(b) of the Sales of Goods Act, 1930]: 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.

Question 9 **(Past Paper Jan 2021/ Past Paper July 2021)**

Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.

Answer: Difference between Condition and Warranty

(i)A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
(ii) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
(iii)Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:
(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 10 **(Past Paper May 2022/ Mtp May 2018)**

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operatives under the said Act.

Answer: The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;
(a) that the bulk shall correspond with the sample in quality;
(b)that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
(c)that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

Implied Warrants:
Warranty of quiet possession [Section 14(b)]: In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way distributed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.

Warranty as to non-existence of encumbrances [Section 14(c)]: The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed

by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.

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 by the usage of trade.

Warranty to disclose dangerous nature of goods: Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

Question 11 (Past Paper Nov 2018, Past Paper Nov 2020, Rtp May 2018, Mtp1 Nov 2018)

What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"?

Answer: Caveat Emptor

In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

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

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.

Question 12 **(Past Paper Jan 2021, Past Paper July 2021)**

Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet, he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M?

Answer: (i) According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(l) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required

and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

(ii) When one party does not fulfil his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.

Question 13 **(Past Paper Dec 2021)**

"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.

Answer: 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.

Question 14 **(Past Paper Dec 2021)**

TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber.

Answer: Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]: The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

(a) The buyer should have made known to the seller the particular purpose for which goods are required.

(b) The buyer should rely on the skill and judgement of the seller.

(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

According to Section 15 of the Sale of Goods Act, 1930 where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e., of 1 inch, TK may reject the timber.

Question 15 **(Past Paper Nov 2022)**

Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:
(i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
(ii) Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.

Answer: (i) Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K.

(ii) According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.
Here, Mr. J supplied the boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Even though the tiles were laid in the car parking space of Mr. K and got damaged later because of vehicle used for unloading of cement bags were beyond the reasonable weight. Hence, the seller i.e., M/s Makrana Marbles is not liable as the buyer Mr. K as before laying down the tiles, has to satisfy himself that the tiles will serve the specific purpose i.e., can be used for car parking space only.

Therefore, the replacement of the damaged tiles cannot be imposed on M/s Makrana Marbles.

Question 16 **(Rtp Nov 18)**

"There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale." Discuss the significance and State exceptions, if any.

Answer: The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maximum 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express term of the contract.

The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

(i) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgement of the seller whose business is to supply goods of that description, there is an implied condition that the goods shall be reasonably fit for that purpose;

(ii) If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.

(iii) If the buyer purchases an article under its patent or other trade name and relies on seller's skills and judgement which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.

(iv) If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which he required the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.

(v) Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.

(vi) An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom; In a sale by sample there is an implied condition that

(a) The bulk shall correspond with the sample in quality;
(b) The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
(c) The goods shall be free from any defect, rendering them unmerchantable;

(viii)In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

Question 17 **(Rtp Nov 2018)**

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?

Ans: 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.

Fact of the case: 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.

Conclusion: Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

Question 18 **(Rtp May 2018)**

Explain the "condition as to Merchantability" and "condition as to wholesomeness" under the Sale of Goods Act, 1930.

Answer: Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary

prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.
Example: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.
Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Question 19 **(Rtp Nov 2022)**

(i) C bought a bun from a baker's shop. The piece of bun contained a stone in it which broke C's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?
(ii) A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930?

Ans: (i) Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.
Hence, C could recover damages in light of the violation of said condition as regards to the consumption of goods i.e., the bun from the baker which is not of merchantable quality.

(ii) Delivery of different description: As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole.
Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

Question 20 **(Rtp Nov 2022)**

Ankit needs a black pen for his exams. He went to a nearby stationery shop and told the seller for a black pen. Seller gives him a pen saying that it is a black pen but it was clearly mentioned on the packet of pen that "Blue Ink Pen". Ankit ignores that and takes the pen. After reaching his house, Ankit

finds that the pen is actually a blue pen. Now Ankit wants to return the pen with the words that the seller has violated the implied conditions of sale by description.
Whether Ankit can do what he wants as per the Sale of Goods Act, 1930.

Answer: Provision: According to Section 16(2) of the Sale of Goods Act, 1930, 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 corresponded with that quality. But where the buyer could find the defect of the goods by ordinary examination, this rule shall not apply. The rule of Caveat Emptor is not applicable.

Fact of the case: In the instant case, Ankit orders a black pen to a stationery shop. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is Blue Ink Pen. Ankit ignores the instruction mention on the pack and bought it. On reaching at his house, he finds that actually the pen is blue ink pen. Now he wants to return the pen.

Conclusion: On the basis of above provisions and facts, it is clear that undoubtedly is case of sale by description but Ankit can find the defect using his ordinary diligence as instructions of blue ink pen was clearly mentioned on the pack of pen. Hence, the rule of Caveat Emptor will be applicable here and Ankit cannot return the pen.

Question 21 **(Mtp1 June 2023)**

Mr. Dheeraj was running a shop selling good quality washing machines. Mr. Vishal came to his shop and asked for a washing machine which is suitable for washing woollen clothes.
Mr. Dheeraj showed him a particular machine which Mr. Vishal liked and paid for it. Later on, when the machine was delivered at Mr. Vishal's house, it was found that it was the wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Dheeraj about the delivery of the wrong machine.
Mr. Dheeraj refused to exchange the same, saying that the contract was complete after the delivery of the washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930, discuss whether Mr. Dheeraj is right in refusing to exchange the washing machine?

Answer: Provision: According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case, the goods do not correspond to sample or description, the buyer has the right to repudiate the contract. Further under Sale of Goods Act, 1930, when the

buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgement and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

Fact of the case: In the given case, Mr. Vishal has informed Mr. Dheeraj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine. Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description.

Conclusion: Therefore Mr. Vishal can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Dheeraj to replace the washing machine with the desired one.

Question 22 **(Rtp June 2023)**

Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of the windows. The technician comes to the site and takes the size of the area where the window is to be fitted. Afterwards, Iron merchant in discussion with his technician intimates to Priyansh that the cost of the window will be ₹5,000 and he will take ₹1,000 as advance. Priyansh gives ₹1,000 as advance and rest after fitting the window.

After three days when a technician tried to fit the window made by him at the site of Priyansh, it was noticed that the size of the window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use.

So, he will not refund the advance money rather Priyansh should give him the balance of ₹4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back?

Answer: Provision: By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods should be in a merchantable position at the time of transfer of property.

Sometimes, the purpose for which the goods are required may be ascertained from the facts and conduct of the parties to the sale, or from the nature of description of the article purchased.

Fact of the case: In such a case, the buyer need not tell the seller the purpose for which he buys the goods. On the basis of above provisions and facts given in the question, it is clear that as the window size was not proper, the window was not in merchantable condition.

Conclusion: Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.

Chapter 3 The Sale of Goods Act, 1930

Unit 3: Transfer Of Ownership And Delivery Of Goods

Question 1 **(Study Material, Mtp2 June 2023)**

"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.(6 Marks)

OR

Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930. **(Mtp1 June 2023)**

Answer: Exceptions to the Rule Nemo dat Quod Non Habet: The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

(i) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods or 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)]

(ii) Sale by one of the joint owners: If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)

(iii) Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by 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).

(iv) 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 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 deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]

(v) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of 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 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)].

(vi) Sale by an unpaid seller: Where on 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)].

(vii) 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.
(iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Question 2 **(Study Material, Rtp May 2018)**

J the owner of a Fiat car wants to sell his car. For this purpose, he hands over the car to P, a mercantile agent for sale at a price not less than ₹50, 000. The agent sells the car for ₹40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.

Answer: Provision: The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

(1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.

(2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.

(3) The buyer should act in good faith.

(4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

Fact of the case: In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car.

Conclusion: Hence, J in this case, cannot recover the car from A.

Question 3 **(Study Material, Mtp May 2018, Mtp2 Nov 2018)**

Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock were destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent? **(6 Marks)**

Answer: Provision: Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.

Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state is unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied.

Fact of the case: Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the goods out of the bulk and he has sent his men for same purpose.

Conclusion: Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

(i) Where the bales have been selected with the consent of the buyer's representatives:

In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

(ii) Where the bales have not been selected with the consent of buyer's representatives:

In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely.

Question 4 **(Study Material, Rtp Nov 2018, Mtp1 Nov 2018)**

Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. **(6 Marks)**

Answer: 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.

Fact of the case: Referring to the above provisions, we can analyse the situation given in the question. Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g., he pledges or sells the goods.

Conclusion: Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Question 5 **(Study Material)**

A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not?

Answer: Provision: According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied: -
(i) One of the several joint owners has the sole possession of them.
(ii) Possession of the goods is by the permission of the co-owners.
(iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

Fact of the case: In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.

Conclusion: The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

Question 6 **(Study Material)**

X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why?

Answer: Provision: According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless: -
(i) The seller has done his act of putting the goods in a deliverable state and
(ii) The buyer has knowledge of it.
Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

Fact of the case: In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted.

Conclusion: In this case, according to the provisions of law, 150 tons sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.
The wheat which was put in the sacks fulfils both the conditions that are: -
(1) The wheat is put in a deliverable state in the sacks.
(2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

Question 7 **(Study Material)**

The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930?

Answer: Provision: According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer: -
(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.
(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

Fact of the case: In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.

Conclusion: When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

Question 8 **(Study Material)**

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

Answer: A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it,

he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet.

Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

Question 9 **(Past Paper May 2018, Past Paper Nov 2019, Past Paper Nov 2022)**

What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. (6 Marks)

Answer: Appropriation of goods: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials regarding appropriation of unascertained goods are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

Question 10 **(Past Paper Nov 2018)**

Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending? **(6 Marks)**

Answer: 1. According to section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

The property in the goods or beneficial right in the goods passes to the buyer at appoint of time depending upon ascertainment, appropriation and delivery of goods. Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. **[Section 55(1) of the Sales of Goods Act, 1930]**

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. **[Section 55(2) of the Sales of Goods Act, 1930].**

Question 11 **(Past Paper May 2019, Past Paper Nov 2020)**

"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? **(6 Marks)**

Answer: 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 of the Sale of Goods Act, 1930).

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 of 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. [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)].

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].

Question 12 **(Rtp Nov 2018, Mtp May 2018)**

State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.

Answer: Essentials of Contract of Sale
The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930:
(i) There must be at least two parties.
(ii) The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
(i) A price in money (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.
(ii) A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
(iii) A contract of sale must be absolute or conditional [section 4(2)].
(iv) All other essential elements of a valid contract must be present in the contract of sale, Example: competency of parties, legality of object and consideration etc.

Question 13 **(Past Paper July 2021)**

"Risk Prima Facie passes with property." Elaborate in the context of the Sale of Goods Act, 1930. **(4 Marks)**

Answer: Risk prima facie passes with property (Section 26 of the Sale of Goods Act, 1930)
According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Question 14 **(Rtp Nov 2022)**

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 liable to pay the price under the Sale of Goods Act,1930? If not, who will ultimately bear the loss?

Answer: According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:
(i) when he signifies his approval or acceptance to the seller,
(ii) when he does any other act adopting the transaction, and
(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

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.
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.

Question 15 **(Rtp May 2023)**

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

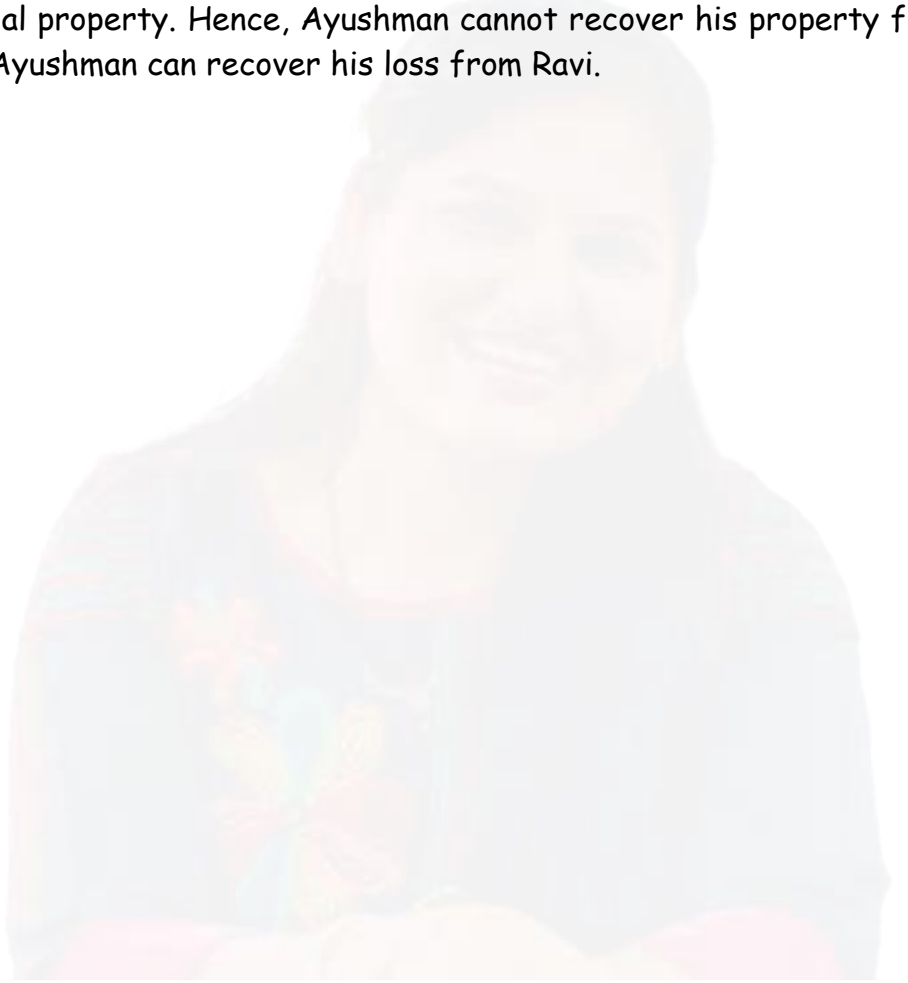
Answer: As per the Proviso to Section 27 of the Sale of Goods Act, 1930, a sale made by a mercantile agent of the goods would pass a good title to the buyer in the following circumstances; namely;

(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 had at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

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



Chapter 3 The Sale of Goods Act, 1930

Unit 4: Unpaid Seller

Question 1 **(Study Material, Rtp Nov 2022)**

When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?

Answer: A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

(i) the goods have been sold without any stipulation as to credit;

(ii) the goods have been sold on credit, but the term of credit has expired;

(iii) the buyer becomes insolvent.

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

Termination of lien: An unpaid seller loss his right of lien thereon-

(i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(ii) When the buyer or his agent lawfully obtains possession of the goods;

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

Question 2 **(Study Material, Past Paper May 2018)**

Mr. D sold some goods to Mr. E for ₹5,00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. (6 Marks)

Answer: Position of Mr. D: Mr. D sold some goods to Mr. E for ₹5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to **section 45(1)** of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

(i) Suit for price (Section 55): In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) Suit for damages for non-acceptance (Section 56): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) Suit for interest [Section 61]: If there is no specific agreement between Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Question 3 **(Study Material)**

Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway; he becomes bankrupt. Can Ram exercise right of stopping the goods in transit?

Answer: Right of stoppage of goods in transit: The problem is based on **Section 50** of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

(i) The seller must be unpaid

(ii) He must have parted with the possession of goods

(iii) The goods must be in transit

(iv) The buyer must have become insolvent

(v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

Question 4 **(Study Material)**

Suraj sold his car to Sohan for ₹75,000. After inspection and satisfaction, Sohan paid ₹25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.

Answer: As per the **section 55** of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods **[Section 55(1)]**.

(ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract **[Section 55(2)]**.

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-

(1) Interest on the remaining amount
(2) Interest during the pendency of the suit.
(3) Costs of the proceedings.

Question 5 **(Study Material, Rtp June 2023)**

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

Answer: Provision: Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold. **Section 47(1)** of the Sales of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases: -

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

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

Conclusion: In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

Question 6 **(Study Material)**

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

Answer: The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods. This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent.
The conditions necessary for exercising this right are: -
1 The buyer has not paid the total price to the seller
2 The seller has delivered the goods to a carrier thereby losing his right of lien
3 The buyer has become insolvent
4 The goods have not reached the buyer; they are in the course of transit.
(Section 50, 51 and 52)
In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.
According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

Question 7 **(Study Material)**

J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?

Answer: **Provision:** The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected: -

1 When the buyer has made the transaction with the consent of the seller.

2 When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

Fact of the case: In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller.

Conclusion: So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.

Question 8 **(Past Paper Nov 2019)**

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? **(6 Marks)**

Answer: Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

(c) a right of re-sale as limited by this Act. **[Sub-section (1)]**

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. **[Sub-section (2)]**.

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

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.

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.

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.

Question 9 **(Rtp Nov 2018, Mtp2 Nov 2018)**

Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit". (6 Marks)

Answer: Right of lien of an unpaid seller

The legal provisions regarding the right of lien of an unpaid seller has been stated from **Sections 47 to 49** of the Sale of Goods Act, 1930 which may be enumerated as follows:

(i) According to Section 47 the unpaid seller of the 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; or

(c) where the buyer becomes insolvent.

The seller may exercise his right of lien not withstanding that he is in possession of the goods as agent or bailee for the buyer.

(ii) **Section 48** states that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

(iii) **According to Section 49 the unpaid seller loses his lien on goods:**

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
(b) when the buyer or his agent lawfully obtains possession of the goods;
(c) by waiver thereof

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

Right of lien and right to stoppage the goods in transit; distinction:

(i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
(ii) Seller should be in possession of goods under lien while in stoppage in transit
(i) Seller should have parted with the possession
(ii) possession should be with the carrier and
(iii) Buyer has not acquired the possession.
(iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
(iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is starting point of the right of stoppage the goods in transit.

Question 10 (Rtp Nov 2018, Past Paper Jan 2021, Past Paper July 2021)

What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930? (6 Marks)

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

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) Reserved price: The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and

(vi) Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 11 **(Past Paper Dec 2021)**

AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(3 Marks)**

Answer: Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

Subject to the provisions of this Act, 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.

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

Question 12 **(Rtp May 2018)**

What do you understand by the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?

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

(a) the whole of the price has not been paid or tendered.

(b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

(a) The seller must be unpaid.
(b) The seller must have parted with the possession of goods.
(c) The goods must be in the course of transit.
(d) The buyer must have become insolvent.
(e) The right is subject to provisions of the Act.

Question 13 **(Mtp2 Nov 2022)**

Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930. **(6 Marks)**

Answer: The right against the buyer are as follows:

1. Suit for price (Section 55 of the Sale of Goods Act, 1930)

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. **[Section 55(1)]**

(b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. **[Section 55(2)].**

2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non - acceptance.

3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

Question 14 **(Mtp2 June 2023)**

Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr. Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan. Mr. Shekharan, who is an unpaid seller, wants to exercise his right to stop in transit.

(a) State with reason, can Mr. Shekharan did so under the Sale of Goods Act, 1930?

(b) Whether your answer would be the same if Mr. Ravi had knowledge of Mr. Raghwan's insolvency at the time of buying the goods? (6 Marks)

Answer: According to **Section 50 to 52** of the Sale of Goods Act, 1930, 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 and he may resume possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price.

However, the right of stoppage in transit is available only in the following conditions:

(i) The seller must be an unpaid seller.
(ii) When the buyer becomes insolvent; and
(iii) When the goods are in transit.

This right of stoppage in transit is lost if the buyer makes a sub – sale of such goods during in transit and that buyer purchased in good faith.

(a) On the basis of above provisions and facts, it can be said that even Mr. Shekharan is an unpaid seller, he cannot apply his right of stoppage in transit as goods have been taken by Mr. Ravi in good faith.

(b) Further, if Mr. Ravi has knowledge of Mr. Raghwan's insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Shekharan can exercise his right of stoppage in transit.

Question 15 **(Past Paper July 2021, Past Paper Nov 2022)**

What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? (6 Marks)

Answer: Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

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

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

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

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

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar.

Chapter 4 The Indian Partnership Act, 1932

Unit 1: General Nature Of Partnership

Question 1 **(Study Material)**

Mr. XU and Mr. YU are partners in a partnership firm. Mr. XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader believing MU as partner supplied 50 Laptops to the firm on credit. After expiry of credit period, ZU did not get amount of Laptop sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of price. Does MU is liable for such purpose?

Answer: Provision: As per **Section 28** of Indian Partnership Act, 1932, Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in **both the cases is identical.**

Conclusion: In the given case, MU (the Manager) is also liable for the price because he becomes a partner by holding out as per Section 28 of Indian Partnership Act, 1932.

Question 2 **(Study Material, Mtp1 Nov 2022)**

Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants 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? (4 Marks)

Answer: 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.

Question 3 **(Past Paper May 2018)**

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. (4 Marks)

Answer: Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

(i) Parties have not retained any record of terms and conditions of partnership.

(ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties

(iii) No account of the partnership was opened with any bank

(iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

Question 4 **(Past Paper May 2019)**

Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? (4 Marks)

Answer: Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. For determining the existence of partnership, it must be proved.

1. There was an agreement between all the persons concerned
2. The agreement was to share the profits of a business and
3. the business was carried on by all or any of them acting for all.

Agreement: Partnership is created by agreement and not by status **(Section 5)**. The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such person's partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Question 5 **(Past Paper Nov 2018)**

Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of

Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (3 Marks)

Answer: A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per **section 28** of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Question 6 **(Mtp May 2018, Rtp Nov 2018, Mtp2 Nov 2018)**

What is Partnership Deed? What are the particulars that the partnership deed may contain? (4 Marks)

Answer: Partnership Deed: Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the

partners to each other are called the 'partnership deed'. It should be drafted with care and be stamped according to the provisions of the **Stamp Act, 1899**. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information:

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.

A partnership firm may add or delete any provision according to the needs of the firm.

Question 7 (Past Paper Nov 2020, Past Paper Jan 2021, Mtp1 Nov 2022)

Explain the following kinds of partnership under the Indian Partnership Act, 1932:

(i) Partnership at will

(ii) Particular partnership. **(2 Marks)**

Answer: 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.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will.

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.

(ii) Particular partnership: A partnership may be organized for the prosecution 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.

Question 8 **(Past Paper Jan 2021)**

Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities? **(3 Marks)**

Answer: Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.
Liabilities: He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

Question 9 **(Past Paper Jan 2021)**

"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. **(4 Marks)**

Answer: 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.

Question 10 (Past Paper Dec 2021, Mtp1 Nov 2022, Mtp2 Nov 2022, Mtp2 June 2023)

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

Answer: (i) Definition of Partnership: 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (**Section 4** of the Indian Partnership Act, 1932).

The definition of the partnership contains the following five elements which must coexist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

(ii) Elements Of Partnership

The definition of the partnership contains the following five elements which must coexist before a partnership can come into existence:

1. Association of two or more persons: Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership. The Partnership Act is silent about the maximum number of partners but **Section 464** of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

2. Agreement: It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. Business: In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. Agreement to share profits: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. 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 rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Question 11 **(Past Paper Dec 2021)**

State whether the following are partnerships:

(i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.

(ii) Two firms each having 12 partners combine by an agreement into one firm.

(iii) A and B, co-owners, agree to conduct the business in common for profit.

(iv) Some individuals form an association to which each individual contributes ₹500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.

(v) A and B, co-owners share between themselves the rent derived from a piece of land.

(vi) A and B buy commodity X and agree to sell the commodity with sharing the profits equally. **(6 Marks)**

Answer: (i) No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such person's partners.

Alternatively, this part can also be answered as below:

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

(ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.

(iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

(iv) No, this is not a case of partnership as no charitable association can be floated in partnership.
(v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
(vi) Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Question 12 **(Past Paper Dec 2021)**

"Sharing in the profits is not conclusive evidence in the creation of partnership". Comment. **(4 Marks)**

Answer: "Sharing in the profits is not conclusive evidence in the creation of partnership" Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such person's partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of **Section 4**, in determining the existence or otherwise of partnership.
But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, **Section 6** has to be referred.
According to **Section 6**, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.
Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.

Question 13 **(Past Paper May 2022)**

(i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

(ii) Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. (2 Marks)

Answer: (i) Partnership for a fixed period (Indian Partnership Act, 1932): Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

(ii) Minor as a partner: A minor is not competent to contract. Hence, a person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights of a minor in a partnership firm:

(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.

Question 14 **(Rtp May 2018)**

State the differences between Partnership and Hindu Undivided Family.

Answer:

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement	The right in the joint family is created by status means its creation by birth in the family
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the

		Karta, the governing male member or female member of the family
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other co-partners are liable only to the extent of their share in the profits of the family business.
Calling for accounts on closure	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
Minor's capacity	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
Number of Members	In case of Partnership number of members should not exceed 50	Members of HUF who carry on a business may be unlimited in number
Share in the business	In a partnership each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family

Question 15 **(Rtp Nov 2022)**

Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932

(a) Whether Bohan is liable for the dues of Karan against the firm.

(b) In case, Karan has filed the suit against firm, whether Bohan would be liable?

Answer: Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not. He is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm. In the instant case, Bohan was admitted as nominal partner in the firm.

A creditor of the firm, Karan has claimed his dues from Bohan as he is the partner in the firm. Bohan has denied for the claim by replying that he is merely a nominal partner.

(a) Bohan is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.

(b) In case, Karan has filed the suit against firm, answer would remain same.

Question 16 **(Rtp June 2023)**

Mr. Ram and Mr. Raheem are working as teachers in Ishwarchan Vidya Sagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenants that the rent would be ₹10,000 per month inclusive of electricity bill. It means the electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹2800 and ₹200 as penalty to resume the electricity connection. Mr. John claimed ₹3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay the whole amount of ₹3000 to Mr. John?

Answer: Provision: According to **Section 4** of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved.

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

Fact of the case: On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said to be under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them.

Conclusion: Therefore, Mr. Ram is liable to pay his share only i.e., ₹1500. Mr. John has to claim the rest ₹1500 from Mr. Raheem.

Chapter 4 The Indian Partnership Act, 1932

Unit 2: Relations Of Partners

Question 1 (Study Material, Rtp Nov 2018, Mtp May 2018, Rtp June 2023)

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? (6 Marks)

Answer: 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.

Question 2 (Study Material)

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

Answer: 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 Act. 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.

Question 3 **(Study Material, Past Paper May 2019, Mtp1 June 2023)**

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? **(6 Marks)**

Answer: Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith 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.

(i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.

(ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

(a) the power of expulsion must have existed in a contract between the partners;

(b) the power has been exercised by a majority of the partners; and

(c) it has been exercised in good faith.

Question 4 **(Study Material, Rtp May 2018)**

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?

Answer: 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. 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

Question 5 **(Study Material, Past Paper Nov 2019)**

Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier

of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.
In the light of the Indian Partnership Act, 1932, explain: (i) To what extent X will be liable if he failed to give public notice after attaining majority? (ii) Can Mr. L recover his debt from X? (6 Marks)

Answer: As per the provisions of **Section 30(5)** of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) 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.
(i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
(ii) In the light of the provisions of **Section 30(7) read with Section 30(5)** of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Question 6 **(Study Material, Mtp1 Nov 2022)**
Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? (4 Marks)

Answer: Provision: As per **Section 29** of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of

business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Fact of the case: In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- to interfere with the conduct of the business.
- to require accounts.
- to inspect books of the firm.

Conclusion: However, Mr. B 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.

Question 7 **(Past Paper May 2018)**

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? **(4 Marks)**

Answer: 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:

the power of expulsion must have existed in a contract between the partners;

the power has been exercised by a majority of the partners; and it has been exercised in good faith. If all these conditions are not present, the expulsion is not deemed to be in bona fide 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.

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

Question 8 **(Past Paper May 2019)**

What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? **(2 Marks)**

Answer: Effect of notice to an acting partner of the firm

According to **Section 24** of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

Question 9 **(Past Paper May 2019)**

Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? **(2 Marks)**

Answer: Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to **section 16**, subject to contract between the partners

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

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

Question 10 **(Past Paper Nov 2018)**

"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(I) Referring to the previsions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.

(II) State the liabilities of a minor partner both:

(i) Before attaining majority and

(ii) After attaining majority. **(4 Marks)**

Answer: (I) Rights which can be enjoyed by a minor partner:

(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) 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.

(II) (i) Liabilities of a minor partner before attaining majority:
(a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
(b) Minor has no personal liability for the debts of the firm incurred during his minority.
(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.
(ii) Liabilities of a minor partner after attaining majority:
Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm. Where he has elected not to become partner, he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Question 11 **(Past Paper Nov 2018)**
State the legal position of a minor partner after attaining majority:
(i) When he opts to become a partner of the same firm.
(ii) When he decides not to become a partner **(2 Marks)**

Answer: (i) 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.

(ii) When he elects not to become a partner: His rights and liabilities continue to be those of a minor up to the date of giving public notice.
(a) His share shall not be liable for any acts of the firm done after the date of the notice.

(b) 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.

Question 12 **(Past Paper Nov 2018)**

Mr. A. Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C. Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. **(3 Marks)**

Answer: Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it
is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable.

Question 13 **(Past Paper Nov 2019)**

When the continuing guarantee can be revoked under the Indian Partnership Act,1932? **(2 Marks)**

Answer: Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)
According to **section 38**, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

Question 14 **(Past Paper Nov 2019)**
What do you mean by Goodwill as per the provisions of Indian Partnership Act,1932? **(2 Marks)**

Answer: Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. **Section 14** of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Question 15 **(Past Paper Nov 2019)**
With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. **(4 Marks)**

Answer: Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932): The insolvent partner cannot be continued as a partner. He will be ceased to be a partner from the very date on which the order of adjudication is made. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of
adjudication.
The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication, Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Question 16 **(Rtp Nov 2018)**
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.

Answer: 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.
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.

Question 17 **(Mtp1 Nov 2018, Past Paper July 2021)**

What do you mean by "implied authority" of the partners in a firm? Point out the extent of partner's implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932. **(3 Marks)**

Answer: Implied Authority of Partner as Agent of the Firm (Section 19): 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.
(1) The authority of a partner to bind the firm conferred by this section is called his "implied authority".
(2) In the 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;
(a) transfer immovable property belonging to the firm; and
(b) enter into partnership on behalf of the firm.

Mode Of Doing Act to Bind Firm (Section 22): In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Question 18 **(Mtp1 Nov 2018)**

A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently, through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.

What will be your advice in case M was having knowledge about the agreement? **(6 Marks)**

Answer: Provision: According to **Section 20** of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The implied authority of a partner may be extended or restricted by contract between the partners. **Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:**

1. The third party knows above the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

Fact of the case: Now, referring to the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role.

Conclusion: Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm.

But in the second situation, if M was having knowledge about the agreement, he cannot recover money from the firm.

Question 19 **(Past Paper Nov 2020)**

Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. **(2 Marks)**

Answer: 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 bona fide interest of the business of the firm.

Question 20 **(Past Paper Nov 2020)**

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.
Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.
Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:
(i) Rights of P & Q to start a competitive business.
(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.
(6 Marks)

Answer: (i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)
(1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not, -
(a) use the firm name,
(b) represent himself as carrying on the business of the firm or
(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable **[Section 36 (2)]**.
From the above, we can infer that P & Q can start competitive business in the

name of M/S PQ & Co after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to **Section 37**, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

Question 21 **(Past Paper Nov 2020)**

Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. **(4 Marks)**

Answer: Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of section 27:

It may be observed that the workings of the two clauses of **Section 27** are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of **clause (b)** would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.

Question 22 **(Past Paper Jan 2021)**

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

(i) Whether P's private estate is liable for the price of furniture purchased by the firm?

(ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive? **(6 Marks)**

Answer: Provision: According to **Section 35** of the Indian Partnership Act, 1932, 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.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

Fact of the case: In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

Conclusion: In the light of the facts of the case and provisions of law:

(i) Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.

(ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Question 23 **(Past Paper Jan 2021)**

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. **(4 Marks)**

Answer: Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932): Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again, in order to bring a case under **Section 25**, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, -

by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

A partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Question 24 (Past Paper July 2021, Mtp2 Nov 2022, Mtp2 June 2023)

Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? **(6 Marks)**

Answer: According to **Section 29** of the Indian Partnership Act, 1932,

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but

entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law:

(i) Yes, Mr. M can validly transfer his interest in the firm by way of sale.

(ii) On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) 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. So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of ₹6 crore in the firm's assets.

Question 25 **(Past Paper May 2022)**

M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932. **(6 Marks)**

Answer: (i) Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932): Subject to contract between the partners and to the provisions of **Section 30**, no person shall be introduced as a partner into a firm without the consent of all the existing partners. In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

(ii) Rights of Transferee of a Partner's interest (Section 29): A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the

creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners. Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.

Question 26 **(Mtp May 2018, Mtp2 Nov 2018)**

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

(i) Whether the Firm's contention shall be tenable?

(ii) What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware? **(6 Marks)**

Answer: The problem in the question is based on the 'Implied Authority' of a partner provided in **Section 19** of the Indian Partnership Act, 1932. The section provides that subject to the provisions of **Section 22** of the Act, 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' **[Sub-Section (1) of section 19]**. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

(i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.

(ii) In the second case also, the answer would be the same as above, i.e., the implied authority of the partner binds the firm.
In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

Question 27 **(Rtp Nov 2022)**

A, B and C are partners in M/s ABC & Company. The firm has decided to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. The machine was purchased but thereafter A and B became insolvent and the firm was unable to pay for machine. Explain, would the estate of C liable for the dues of M/s LMN & Company?

Answer: Provision: Liability of Partner in case of death
According to **Section 35** of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. The estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.
Fact of the case: In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine.
Conclusion: On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company.

Question 28 **(Rtp June 2023)**

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

goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932.

Answer: Provision: According to **Section 20** of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Further, according to **Section 21**, a partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Fact of the case: On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss.

Conclusion: Hence, this sale will bind the firm.

Question 29 **(Rtp June 2023)**

X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of the dissolution of the firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932?

Answer: By virtue of provisions of **Section 45** of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of the dissolution of the firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

Following the provisions of **Section 45**, X and Y are continuing to be liable against third parties even after dissolution of the firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z.

Question 30 **(Rtp June 2023, Past Paper Nov 2022)**

Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932? (6 Marks)

Answer: Expulsion of partner and factors to be kept in mind:

As per **Section 33** of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

(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 bona fide interest of the business of the firm and shall be null and void.

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

(i) The expulsion must be in the interest of the partnership

(ii) The partner to be expelled is served with a notice

(iii) He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of **section 33**.

Question 31 **(Past Paper Nov 2022)**

What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932? (4 Marks)

Answer: Partnership Vs. Co-Ownership or joint ownership i.e., the relation which subsists between persons who own property jointly or in common.

Basis	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.

4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

Chapter 4 The Indian Partnership Act, 1932

Unit 3: Registration And Dissolution of A Firm

Question 1 **(Study Material)**

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

Answer: Application For Registration (Section 58):

(1) The registration of a firm may be affected 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. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely: - '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.

Question 2 **(Study Material, Mtp1 June 2023)**

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. **(4 Marks)**

Answer: Dissolution of Firm:

The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes in capacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the

remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

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) wilful 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; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

Question 3 (Study Material, Past Paper May 2019, Past Paper Nov 2022)
"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of nonregistration of the partnership firms In India? (4 Marks)

Answer: It is true to say that Indian Partnership Act, 1932 does not make the registration of firms' compulsory nor does it impose any penalty for non-registration.

Following are consequences of Non-registration of Partnership Firms in India:
The Indian Partnership Act, 1932 does not make the registration of firms' compulsory nor does it impose any penalty for non-registration. However, under **Section 69**, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

These disabilities briefly are as follows:

(i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) 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. But such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Question 4 (Past Paper May 2018, Past Paper Nov 2020, Mtp1 Nov 2022)

What are the consequences of Non-Registration of a Partnership Firm? Discuss. **(4 Marks)**

Answer: Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932]: Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for them registration. These disabilities briefly are as follows:

No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

Aggrieved partner cannot bring legal action against another 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. But such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Question 5 (Rtp Nov 2018, Past Paper Nov 2018, Past Paper May 2022)

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. **(4 Marks)**

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

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

(1) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.

(2) Permanent incapacity: When a partner, other than the partner suing, has become in any

way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(3) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.

(4) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. **Following comes in to category of breach of contract:**

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

(5) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed

his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.

(6) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(7) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm.

The following are the cases for the just and equitable grounds-

(i) Deadlock in the management.

(ii) Where the partners are not in talking terms between them.

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

Question 6 **(Past Paper May 2018, Past Paper Nov 2019)**

Distinguish between dissolution of firm and dissolution of partnership.

(2 Marks)

Answer: Dissolution Of Firm Vs. Dissolution Of Partnership

Basis of Difference	Dissolution of Firm	Dissolution of Partnership
Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Question 7 **(Past Paper Nov 2020)**

What are the rights which won't be affected by Non-Registration of Partnership firm? **(4 Marks)**

Answer: 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 ₹100 in value.

Question 8 (Mtp1 Nov 2018, Past Paper July 2021, Mtp2 Nov 2022, Mtp2 June 2023)

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. (4 Marks)

Answer: Mode of Settlement of partnership accounts:

As per **Section 48** of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: -

(i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Question 9 (Rtp May 2018)

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?

Answer: 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.

Fact of the case: 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.

Conclusion: 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.

Question 10 **(Rtp Nov 2022)**

G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can G, I and S continue the partnership or will their partnership firm get dissolved?

Answer: Compulsory dissolution of a firm (Section 41)

A firm is compulsorily dissolved 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.

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of **Section 41** of the Indian Partnership Act, 1932.

Chapter 6 The Companies Act, 2013

Question 1 **(Study Material, Mtp May 2018)**

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

Answer: **Company limited by guarantee: Section 2(21)** of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a **'guarantee company' and 'share company'** are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Question 2 **(Study Material, Rtp May 2018, Mtp1 Nov 2022)**

Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer: Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of **section 8** of the Companies Act, 2013. **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, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in
- promoting its objects and

• prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

(i) **Section 8** allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.

(ii) The registrar shall on application register such person or association of persons as a company under this section.

(iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

Question 3 **(Study Material, Rtp Nov 2018, Mtp2 Nov 2018, Past Paper May 2022)**

Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?

Answer: 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 are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.

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 information on. 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.

Example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the

company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company.
As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company, then the lender steps into the shoes of the debtor paid off and consequently, he would be entitled to recover his loan to that extent from 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.
For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

Question 4 **(Study Material, Past Paper Jan 2021)**

Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.

Answer: 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.

In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in Morris v Kansseen, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

(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.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority.

Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property. Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff was put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

(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.

Forgery may in circumstances exclude the 'Turquand Rule'. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the

plaintiff was the transferee of a share certificate issued under the seal of the defendant's company.
The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.
The plaintiff contended that whether the signature was genuine or forged was a part of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

Question 5 **(Study Material, Mtp May 2018, Past Paper Nov 2019)**

A, an assesses, 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?

Answer: 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 assesses.

In Dinshaw Maneckjee Petit case it was held that the company was not a genuine company at all but merely the assesses himself disguised that the legal entity of a limited company. The assesses 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 assesses 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.

Fact of the case: In the instant case, the four private limited companies were formed by A, the assesses, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assesses 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.

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

Question 6 (Study Material, Past Paper May 2019, Past Paper May 2022)

Sound Syndicate Ltd., a public company, its articles of association empower the managing agents to borrow both short- and long-term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company for a loan of ₹25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?

Answer: Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

Question 7 **(Study Material, Past Paper July 2021)**

Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

(a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Answer: (A) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(B) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 120 days during the immediately preceding financial year.

Question 8 (Study Material, Mtp May 2018, Rtp Nov 2018, Mtp2 Nov 2018)

Examine the following whether they are correct or incorrect along with reasons:

(a) A company being an artificial person cannot own property and cannot sue or be sued.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

(C) Affixing of Common seal on company's documents is compulsory.

Answer: (a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

(C) Incorrect: The common seal is a seal used by a corporation as the symbol of its incorporation. The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from **Section 9** so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Question 9 **(Past Paper May 2018)**

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

Answer: As per the facts given, Ravi Private Limited borrowed ₹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.

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 up to 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.

Question 10 **(Past Paper May 2018, Rtp Nov 2018)**

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

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

Rules regarding its membership:

• Only one person as member.

• The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

• The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.

• Such other person may be given the right to withdraw his consent.

• The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.

• Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

• Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year-

➢ shall be eligible to incorporate an OPC;

➢ shall be a nominee for the sole member of an OPC.

• No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

• No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

• Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

Question 11 **(Past Paper May 2018)**

State the limitations of the doctrine of indoor management under the Companies Act, 2013.

Answer: The doctrine of Indoor Management has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

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

(ii) Suspicion of Irregularity: 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.

(iii) 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.

Question 12 **(Past Paper Nov 2018, Mtp2 June 2023)**

A company registered under section 8 of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

Ans: A company that is registered under **section 8** of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.

The company in question is a **section 8** company and hence it cannot declare dividend. Thus, the contention of members is incorrect.

Question 13 **(Past Paper Nov 2018)**

There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate.

Answer: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

Lifting of Corporate Veil

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

- **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- **Where the device of incorporation is adopted for some illegal or improper purpose:** Where the device of incorporation is adopted for some illegal or improper purpose, **Example:** to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Question 14 **(Past Paper Nov 2018)**

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 to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free from his liability.

Answer: 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.

Fact of the case: 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.

Conclusion: 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.

Question 15 **(Past Paper May 2019)**

What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act, 2013? Mention the conditions of the issue and revocation of the licence of such company by the government.

Answer: Formation of companies with charitable purpose etc. (Section 8 company):
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, sports, education, research, social welfare, religion, charity, protection of environment etc.
Such company intends to apply its profit in
• promoting its objects and
• prohibiting the payment of any dividend to its members.
Examples of **section 8** companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Power of Central government to issue the license–
(i) **Section 8** allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words

'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
(ii) The registrar shall on application register such person or association of persons as a company under this section.
(iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

Revocation of license: 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.

Question 16 **(Past Paper May 2019)**

Popular Products Ltd. is company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹100 each and 8 Lakhs Preference Shares of ₹100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as subsidiary company of Popular products. Ltd., if it. Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.

Answer: In the present case, the total share capital of Popular Products Ltd. is ₹20 crores comprised of 12 Lakh equity shares and 8 Lakhs preference shares. Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd. which amounts to less than one-half of its total share capital. Hence, Jovial Ltd. by virtue of shareholding is not a holding company of Popular Products Ltd.
Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company. [**Section 2(87)** of the Companies Act, 2013].

Question 17 **(Past Paper Nov 2019, Past Paper Nov 2022)**

Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about ₹2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so?

Answer: Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013. In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013.

Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

Question 18 **(Past Paper Nov 2019)**

"The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association.

Answer: The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

• It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.

• It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under **Section 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

• The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power

confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

Contents of the memorandum:

The memorandum of a company shall state—

(a) the name of the company **(Name Clause)** with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under **section 8** of the Act. (b) the State in which the registered office of the company **(Registered Office clause)** is to be situated;

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof **(Object clause);**

(d) the liability of members of the company **(Liability clause)**, whether limited or unlimited (e) the amount of authorized capital **(Capital Clause)** divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.

(f) the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

Question 19 **(Past Paper Nov 2020)**

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 Crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-Convertible Debentures stands at ₹120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

Answer: As per **Section 2(6)** of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the –

(a) Paid-up equity share capital; and

(b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹15 crore, which is less than requisite control of 20% of total share capital (i.e., 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

Question 20 **(Past Paper Nov 2020)**

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.

Answer: 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.

Question 21 **(Past Paper Nov 2020)**

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?

Answer: 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.
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.

Question 22 **(Past Paper Jan 2021)**

ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

Directors and their relatives	**190**
Employees	**15**
Ex-employees (Shares were allotted when they were employees)	**20**
Others (Including 10 joint holders holding shares jointly in the name of father and son)	**20**

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion.

Answer: In the given case, ABC Limited was having 245 members in the company. The Board of Directors of said company proposes to convert it into private company. In lines with **Section 2 (68)** of the Companies Act, 2013, a private company by its Articles, limits the number of its members to 200.
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.

It is further provided that, following persons shall not be included in the number of members-
(i) Persons who are in the employment of the company; and
(ii) Persons, who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
As per the facts, ABC Limited has members constituting of Directors & their relatives, employees, Ex-employees and others including 10 joint holders. In line with the requirement for being a private company, following shall be restricted to be as members i.e., Directors & their relatives & joint holders holding shares jointly constituting 200 members (190+10). Accordingly, ABC Limited when converted to private company shall not be required to reduce the number of

members as the number of members as per requirement of a private company, is fulfilled that is of maximum 200 members.

Question 23 **(Past Paper July 2021, Rtp June 2023)**

Explain the classification of the companies on the basis of control as per the Companies Act, 2013.

Answer: In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

(a) Holding and subsidiary companies: 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. **[Section 2(46)]** For the purposes of this clause, the expression "company" includes anybody corporate.

Whereas **section 2(87)** defines **"subsidiary company"** in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in **sub-clause (i) or sub-clause (ii)** is of another subsidiary company of the holding company;

(II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(III) the expression "company" includes anybody corporate;

(IV) "*layer*" *in relation to a holding company means its subsidiary or subsidiaries.*

(b) Associate company [Section 2(6)]: In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;
(ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

The term "Total Share Capital", means the aggregate of the –

(1) Paid-up equity share capital; and
(2) Convertible preference share capital.

Question 24 **(Past Paper July 2021)**

What is the main difference between a Guarantee Company and a Company having Share Capital?

Answer: Difference between Guarantee Company [Section 2(21) of the Companies Act, 2013] and a Company having share capital [Section 2(22)].

In case of **guarantee company**, the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; whereas in the case of company having share capital, members may be called upon to discharge their liability at any time, either during the company's life -time or during its winding up.

It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

In Narendra Kumar Agarwal vs. Saroj Maloo, the Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

Question 25 **(Past Paper Dec 2021)**

AK Private Limited has borrowed ₹36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is ₹30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

Answer: This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association

is wholly void and inoperative in law and is therefore not binding on the company. This is because, the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure.
Hence, any agreement ultra vires the company shall be null and void.

(i) Whether AK Private Limited is liable to pay the debt?
As per the facts given, AK Private Limited borrowed ₹36 crores from BK Finance Limited which is beyond its borrowing power of ₹30 crores.
Hence, contract for borrowing of ₹36 crores, being ultra vires the memorandum of association and thereby ultra vires the company, is void. AK Private Limited is not, therefore, liable to pay the debt.

(ii) Remedy available to BK Finance Limited:
In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

Question 26 **(Past Paper Dec 2021, Mtp2 Nov 2022)**
What do you mean by the term Capital? Describe its classification in the domain of Company Law.

Answer: (i) Meaning of capital: The term capital has variety of meanings. But in relation to a company limited by shares, the term 'capital' means 'share capital'. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

(ii) Classification of capital: In the domain of Company Law, the term capital can be classified as follows:
(a) Nominal or authorised or registered capital: This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.
(b) Issued capital: It means such capital as the company issues from time to time for subscription.
(c) Subscribed capital: As such part of the capital which is for the time being subscribed by the members of a company.

(d) Called up capital: As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.
(e) Paid-up capital: It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

Question 27 **(Past Paper Dec 2021, Mtp2 Nov 2022)**

BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹30 Lakhs (3 Lakhs equity shares of ₹10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?

Answer: Provision: Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—
(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —
(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in **sub-clause (i) or sub-clause (ii)** is of another subsidiary company of the holding company;
(II) "layer" in relation to a holding company means its subsidiary or subsidiaries.
Fact of the case: In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited.
Conclusion: Hence, PQ Private Limited is subsidiary of BC Private Limited.

Question 28 **(Past Paper May 2022, Mtp2 Nov 2022)**

Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)?

If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013.

Answer: Provision: As per the provisions of the Companies Act, 2013, **only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year)** –
- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

Fact of the case: In the given case, Mr. R is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Hence, Mr. R is eligible to incorporate an OPC.
Also, even though Mr. S's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen.

Conclusion: Hence, S's name cannot be given as nominee in the memorandum.

Question 29 **(Mtp1 Nov 2018)**

The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the pu rpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs. The members of the company convened an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advise them.

Answer: 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 authorized 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 deal s 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.

Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.

Question 30 **(Mtp1 Nov 2018)**

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?

Answer: 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 form 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, <u>three important consequences follow:</u>

(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.

(c) 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.

Question 31 **(Mtp1 Nov 2018)**

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.

Answer: 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.

Question 32 **(Mtp2 Nov 2018, Mtp1 June 2023)**

Krishna, an assesses, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Krishna as a pretended loan. This way, Krishna divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

Answer: 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 assesses.

(1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assesses purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assesses himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

(2) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assesses as pretended loans.

Question 33 **(Mtp1 June 2023)**

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

(a) Directors and their relatives	**190**
(b) Employees	**15**
(c) Ex-Employees (Shares were allotted when they were employees)	**10**
(d) 5 couples holding shares jointly in the name of husband and wife (5*2)	**10**
(e) Others	**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.

Answer: 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.

Fact of the case: 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:

(i) Directors and their relatives	**190**
(ii) 5 couples (5*1)	**5**
(iii) Others	**5**
Total	**200.**

Conclusion: 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.

Question 38 **(Mtp2 June 2023)**

Mr. Raj formed a company with a capital of ₹50,000. He sold his business to another company for ₹40,000. For the payment of sale, he accepted shares worth ₹30,000 (3000 shares of ₹1 each). The balance 10,000 was considered as loan and Mr. Raj secured the amount by issue of debentures. His wife and three daughters took one share each. Owing to strike the company was wound up. The assets of the company were valued at ₹6000. The debts due to unsecured creditors were ₹8000. Mr. Raj retained the entire sum of ₹6000 as part payment of loan. To this, the other creditors objected. Their contention was that a man could not own any money to himself, and the entire sum of ₹6000 should be paid to them. Examine the rights of Mr. Raj and other creditors. Who will succeed?

Answer: Separate Legal Entity: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company. The leading case law of Saloman Vs Saloman and Company Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members.

Based on the above discussion and provisions, Mr. Raj was entitled to the assets of the company as he was a secured creditor of the company and the contention of the creditors that Mr. Raj and the company are one and same person is wrong.

Question 39 **(Mtp1 Nov 2022, Rtp June 2023)**

Articles of Association of XYZ Private Limited provides that Board of Directors can take the loan up to ₹50,00,000 for company by passing the Board Resolution. In the case where the loan amount is in excess of the said limit, Special Resolution is required to be passed in general meeting. Due to urgent need of funds, Board of Directors applied for loan in a reputed bank for ₹60,00,000 without passing the Special Resolution in the general meeting. Board of Directors gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lend the money. On demanding the repayment of loan, company denied the payment as the act was ultra vires to company. Advise.

Answer: Provision: According to doctrine of Indoor Management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not enquire into the regularity of internal proceedings as required by M & A. This was also decided in case of Royal British Bank Vs. Turquand.

Fact of the case: In the instant case, Articles of Association of XYZ Private Limited have taken loan from reputed bank for ₹60,00,000 by passing Board Resolution while Special Resolution was necessary for such amount. Board of Directors gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lends the money.

Conclusion: On the basis of provisions of doctrine of Indoor Management, the bank can claim the amount of his loan from the company. The bank can believe on the undertaking given by board and no need to enquire further.

Question 40 **(Mtp1 Nov 2022)**

Mr. Sunny sold his business of cotton production to a cotton production company CPL Private Limited in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the s tock of cotton of CPL Private Limited but in his own name not in the name of company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sunny filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim?

Answer: Provision: According to the decision taken in case of Salomon v/s Salomon & Co. Ltd., a company has separate legal entity. A company is different from its members. Further, according to the decision taken in case of Macaura v/s Northern Assurance Co. Ltd., a member or creditor does not have any insurable interest in the property of company. Members or creditors of the company cannot claim ownership in the property of company.

Fact of the case: On the basis of above provisions and facts, it can be said Mr. Sunny and CPL Private Limited are separate entities. Mr. Sunny cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor.

Conclusion: Hence, the insurance company is not liable to pay to Mr. Sunny for the claim for the loss of stock by fire.

Question 41 **(Rtp May 2018)**

Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.

Answer: 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.

Question 42 **(Rtp May 2018)**

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.

Answer: 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.
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.

Question 43 **(Rtp May 2018)**

When a company is registered, it is clothed with a legal personality. Explain.

Answer: When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.
(a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.
(b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.
A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the

company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

Question 44 **(Rtp Nov 2018)**

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?

Answer: 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.

Fact of the case: 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.

Conclusion: Therefore, even with the death of all members (i.e., 5), ABC (Pvt.) Ltd. does not cease to exist.

Question 45 **(Mtp Nov 2022)**

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

Answer: Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that

members should not be liable for those errors. In other words, they enjoy corporate insulation. Thus, the shareholders are protected from the acts of the company.

However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

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

(i) To determine the character of the company i.e., to find out whether co-enemy or friend

(ii) To protect revenue/tax

(iii) To avoid a legal obligation

(iv) Formation of subsidiaries to act as agents.

(v) Company formed for fraud/improper conduct or to defeat law.

Question 46 **(Rtp Nov 2022)**

A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013.

Answer: Provision: If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company.

The facts of the case are similar to the case of Merchandise Transport Limited vs. British Transport Commission (1982), wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were held to be one commercial unit and the application for licences was rejected.

Conclusion: Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

Question 47 **(Rtp Nov 2022)**

A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company kept a general meeting by giving only 14 days' notice. Is this valid?

Answer: A company registered under **Section 8** of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.
Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.
Also, **Section 8** company is allowed to call a general meeting by giving 14 days instead of 21 days.

Question 48 **(Rtp Nov 2022)**

No limit Private Company is incorporated as unlimited company having share capital of ₹10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against No limit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

Answer: Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.
On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable up to his share

capital. His unlimited liability wil l arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

Question 49 **(Mtp1 June 2023)**

Mr. Mohan had purchased some goods from Sunflower Limited on credit. A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no longer responsible for the same. He also contended that Mr. Ramesh is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. Mohan is free from his liability.

Answer: 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.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and he (Mr. Ramesh) gave the receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company.

Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid an amount due to an employee of the company.

Question 50 **(Mtp2 June 2023, Rtp June 2023)**

ABC Limited was into the sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires. With reference to the same, briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?

Answer: 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. 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 even by the unanimous consent of all the shareholders of the company.

Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of Memorandum of Association as it becomes ultra vires and thus null and void.

Question 51 **(Rtp June 2023)**

In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into the open sea. The boat capsizes and all of them die after being drowned. Explain with reference to the provisions of Companies Act, 2013:

(i) Is Flower Fans Private Limited no longer in existence?

(ii) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?

Answer: (i) Perpetual Succession – A company on incorporation becomes a separate legal entity. It is an artificial legal person and has perpetual succession

which means even if all the members of a company die, the company still continues to exist. It has a permanent existence. The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

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

Question 52 **(Past Paper Nov 2022)**

Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.

Answer: Listed company: As per the definition given in the **section 2(52)** of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.
Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
Whereas the word securities as per the **section 2(81)** of the Companies Act, 2013 has been assigned the same meaning as defined in **clause (h) of section 2** of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

Question 53 **(Past Paper Nov 2022)**

Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.

Answer: Mike LLC is incorporated in Singapore and having a place of business in Pune, India. Since, Mike LLC is incorporated outside India and having a Place of business in India, hence it is a foreign Company.
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.

Chapter 5 The Limited Liability Partnership Act, 2008

Question 1 **(Study Material)**

Examine the concept of LLP.

Answer: Meaning – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of "limited liability partnership"

- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Question 2 **(Study Material)**

Enumerate the various characteristics of the LLP.

Answer: LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement

- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Minimum and maximum number of members.
- Business for profit only
- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign.

Question 3 **(Study Material)**

What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in an LLP?

Answer: Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to **section 7**.

According to section 7 of the LLP Act, 2008:

(i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

(ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

(iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.

Question 4 **(Study Material)**

What are the effects of registration of LLP?

Answer: Effect of registration (Section 14):

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

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Question 5 **(Past Paper Jan 2021, Mtp2 June 2023)**

Enumerate the circumstances in which LLP may be wound up by Tribunal.

(5 Marks)

Answer: Circumstances in which LLP may be wound up by Tribunal (Section 64):

An LLP may be wound up by the Tribunal:

(a) if the LLP decides that LLP be wound up by the Tribunal;

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

(c) if the LLP is unable to pay its debts;

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

(e) 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

(f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Question 6 **(Study Material, Past Paper May 2019, Past Paper July 2021, Mtp2 Nov 2022, Mtp1 June 2023)**

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

(5 Marks)

Answer: LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (**Section 26** of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 7 **(Study Material, Past Paper May 2018, Past Paper Nov 2018)**

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. (5 Marks)

Answer: Essential elements to incorporate Limited Liability Partnership (LLP)
Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:
(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
(iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
(vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
(vii) LLP Name.

Steps to incorporate LLP:
1. Name reservation:
(i) The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
(ii) Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of an LLP business.

2. Incorporate LLP:
(i) After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
(ii) e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

3. LLP Agreement:
(i) Execution of LLP Agreement is mandatory as per **Section 23** of the Act.
(ii) LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Question 8 **(Past Paper Nov 2019)**
Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. **(5 Marks)**

Answer: Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]

An LLP is not bound by anything done by a partner in dealing with a person if—

(a) the partner in fact has no authority to act for the LLP in doing a particular act;

(b) and the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Question 9 **(Past Paper Dec 2021)**

State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. **(5 Marks)**

Answer: Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

(i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(ii) A document may be served on an LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

(iii) An LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

(iv) If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

Question 10 **(Past Paper May 2022)**

Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008. **(5 Marks)**

Answer: Incorporation by registration (Section 12 of LLP Act, 2008):
(1) When the requirements imposed by **clauses (b) and (c) of sub-section (1) of section 11** have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by **clause (a)** of that sub-section has not been complied with, he shall, within a period of 14 days—
(a) register the incorporation document; and
(b) give a certificate that the LLP is incorporated by the name specified therein.
(2) The Registrar may accept the statement delivered under **clause (c) of sub-section (1) of section 11** as sufficient evidence that the requirement imposed by **clause (a)** of that sub-section has been complied with.
(3) The certificate issued under **clause (b) of sub-section (1)** shall be signed by the Registrar and authenticated by his official seal.
(4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate Limited Liability Partnership (LLP)
Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:
(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
(iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
(vi) To execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in **First Schedule of LLP Act, 2008** will be applied.
(vii) LLP Name.

Question 11 **(Mtp May 2018, Mtp2 Nov 2018)**
State the meaning of Limited Liability Partnership (LLP). What are the relevant steps to incorporate LLP? **(5 Marks)**

Answer: Meaning: An LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Steps to incorporate LLP:

(a) Name reservation

• The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.

• Applicant has to file e- Form 1, for ascertaining availability and reservation of the name of an LLP business.

(b) Incorporate LLP

• After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).

• e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/ designated partners to act as partners/ designated partners.

(c) LLP Agreement

• Execution of LLP Agreement is mandatory as per Section 23 of the Act.

• LLP Agreement is required to be filed with the registrar in e- Form 3 within 30 days of incorporation of LLP.

Question 12 **(Mtp1 Nov 2018, Rtp May 2018, Past Paper Nov 2022)**

Differentiate between a Limited Liability Partnership and Limited Liability Company. **(5 Marks)**

Answer: Distinction between Limited Liability Partnership (LLP) and Limited Liability Company

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).

Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	**Private company:** Minimum – 2 members Maximum 200 members **Public company:** Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors public co. – 3 directors

Question 13 **(Mtp1 Nov 2022, Rtp June 2023)**

What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021? **(5 Marks)**

Answer: "Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: 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
(ii) 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
(iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

Question 14 **(Rtp May 2018)**

What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming an LLP for doing business?

Answer: LLP: An LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Advantages of LLP form:

(a) LLP is organized and operates on the basis of an agreement.

(b) It provides flexibility without imposing detailed legal and procedural requirements

(c) It enables professional/technical expertise and initiative to combine with financial risk-taking capacity in an innovative and efficient manner.

(d) It is easy to form

(e) In LLP form, all partners enjoy limited liability

(f) Flexible capital structure is there in this form

(g) It is easy to dissolve.

Question 15 **(Rtp Nov 2022)**

What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008?

Answer: Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

The accounts of LLP shall be audited in accordance with such rules as may be prescribed.

Chapter 7 The Negotiable Instruments Act, 1881

Question 1 **(Study Material)**

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

Answer: No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

Question 2 **(Study Material)**

M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

Answer: The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable.
M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Question 3 **(Study Material)**

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

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

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

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

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

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

Question 4 **(Study Material)**

Rama executes a promissory note in the following form, 'I promise to pay a sum of ₹10,000 after three months'. Decide whether the promissory note is a valid promissory note.

Answer: The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.