
CA INTERMEDIATE MAY 25
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Question 1

A shopkeeper displayed a pair of dress in the showroom 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 shopkeeper to receive the payment and pack up the dress. The shopkeeper 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 shopkeeper for the above cause under the Indian Contract Act, 1872.

Answer

Provision: [Indian Contract Act, 1872]

1. The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract.
2. 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.
3. 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 shopkeeper 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 2

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?

Ans –

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

1. 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.

2. 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.

3. 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 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 3

Mr. Sohan Lal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 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 2018, Mr. Sohan Lal died leaving behind his son and life. On 15th October 2018 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 redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Ans-

Provision: [Indian Contract Act, 1872]

1. 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.
2. 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
3. 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.
4. 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 case:

1. 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.

2. 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.

3. Moreover, it is provided in the law that "in case covenant running with the land is also applicable, 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 4

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?

Ans –

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.

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.

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

Question 5

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 of 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?

Ans –

Provision – As per sec 27 – Agreement in restraint of trade is void

1. An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
2. Exception - an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

Facts of Case:

1. An agreement made between X & Y in which X will work as assistant to Y who is Chartered Accountant at Jodhpur for 2 years and agreed not to work / practice as a chartered accountant on his own account within 20 kms of the office of Y at jodhpur.
2. At the end of one year X left the assistantship and started practice on his own account within the said area of 20 kms

Conclusion:

Therefore, referring to above provisions and facts in the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

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 6

Ishaan, aged 16 years, was studying in an engineering college. On 1st March 2016 he took a loan of Rs 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May 2017. Ishaan possesses assets worth Rs 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: -

Act Applicable – Section 11 of Indian Contract Act 1872

Provision: [Indian Contract Act, 1872]

1. 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.
2. 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].
3. 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.
4. The liability of minor is only to the extent of the minor's property.

Facts of Case:

1. Ishaan aged 16 years was studying in an engineering college took loan from Vishal of Rs. 2 lakhs for payment of his college fee and agreed to pay the same by 30th may, 2017.
2. Ishaan possesses assets value of which is worth Rs. 15 lakhs.
3. On due date Ishaan fails to pay the sum to Vishal. Now Vishal wants to recover the amount of loan from Ishaan out of his assets.

Conclusion:

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

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 a 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: -

Provision: [Section 18 & 19 Indian Contract Act, 1872]

1. According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:
    a. 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.
    b. 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.
    c. 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.

2. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract. 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.

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

Question 8

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 –

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). 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. 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 9

Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was ` 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of ` 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872?

Answer

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

Further, a person is deemed to be in a 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 relation 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.

Section 19A provides that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

From the facts of the case, Chandan signed the promissory note under undue influence applied by doctor. Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan.

Question 10

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ₹40,000. He was very happy to get ₹ 40,000 and quickly went to the market and purchased a laptop worth ₹30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

Answer –

As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning.

When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.

However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained.

Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same. Hence, in the present case, Rahul is not liable to repay ` 40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Question 11

Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹6,00,000 to Kartik. Over a period, Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872.

Answer: -

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:

1. Ajay, Vijay, and Sanjay were partners of a software business. They jointly promise to pay 6, 00,000 to Kartik.

2. Afterwards Vijay became insolvent and can only pay one-fourth of his debts and due to which Sanjay is compelled to pay the whole amount to Kartik.

Conclusion:

Therefore, by considering the above provisions and facts of the case here Sanjay paid the whole amount ₹6,00,000 to Kartik. He will receive ₹50,000 from Vijay (1/4th of ₹2,00,000) and ₹2,75,000 from Ajay (₹2,00,000 of his part of debt and ₹75,000 of the debt of ₹1,50,000 from Vijay's part which shall be paid by Sanjay & Ajay due to insolvency of Vijay.)

Question 12
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:

1. Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

2. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
3. What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

Answer: -

Provision: [Indian Contract Act, 1872]

1. 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.

2. 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.

3. 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.

4. 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.

5. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

Conclusion:

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

2. 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.

3. 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 13

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

a) Can Mr. Singhania terminate the contract with Mr. Sonu?

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

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

Answer-

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

(a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract.

(b) In the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.

In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

Question 14

"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.

Answer: -

Provision: [Section 40 of Indian Contract Act, 1872]

1. 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.

2. Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides that, "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."

3. Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:
   a) 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
   b) 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.
   c) 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 take advantage of any supervening impossibility, which may have the effect of discharging the contract.

Question 15

X entered into a contract with 'Y' to supply him 1,000 water bottles @ Rs 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 @ Rs 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 Rs 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 (vimp)

Answer: -

Provision: [Indian Contract Act, 1872]

1. 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.

2. Such compensation is not to be given for any remote and indirect loss or damage sustained because of the breach.

3. When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

4. 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.

Facts of Case:

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 performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances.

Conclusion:

1. Therefore, 'X' is entitled to claim from 'Z' Rs 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'.
2. If 'X' had not informed 'Z' of 'Y's contract, then the Number 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 Rs 750/- (i.e., 1000 Water bottles x 0.75 paise).
   (2nd case mein assumption liya hai ki x ne y ke saath contract fulfill kiya hai by purchasing from market)

Question 16

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e., as much as the party doing the service has deserved.

2. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.

3. For the application of this doctrine, two conditions must be fulfilled ed:
    a) It is only available if the original contract has been discharged.
    b) The claim must be brought by a party not in default.
4. The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

5. The claim for quantum meruit arises in the following cases:
    - when an agreement is discovered to be void or when a contract becomes void.
    - When something is done without any intention to do so gratuitously.
    - Where there is an express or implied contract to render services but there is no agreement as to remuneration.
    - When one party abandons or refuses to perform the contract.
    - Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
    - When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

Question 17

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. 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.

2. 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. For example, A contracts to pay B Rs10, 000 if he is elected President of a particular association. This is a contingent contract.
3. 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.

4. The rules regarding the contingent contract are as follows"
   a) Contingent contract dependent on the happening of an uncertain future cannot be enforced until the even has happened. If the even becomes impossible, such contracts become void. (Sec.32).
   b) Where a contingent contract is to be performed if a particular event does not happen performance can be enforced only when happening of that even becomes impossible (Sec. 33).
   c) If a contract is contingent upon, how a person will act at an unspecified time the even shall be considered to become impossible; when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34,35).
   d) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

Question 18

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. 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'.

2. 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.

3. The salient features of a quasi-contract are:
   a) It does not arise from any agreement of the parties concerned but is imposed by law.
   b) Duty and not promise is the basis of such contract.
   c) The right under it is always a right to money and generally though not always to a liquidated sum of money.
   d) Such a right is available against specific person(s) and not against the whole world.

A suit for its breach may be filed in the same way as in case of a complete contract

Circumstances Identified as Quasi-Contracts:

a) Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

b) Payment by an interested person: A person who has paid a sum of money, which another person is obliged to pay, is entitled to be

reimbursed by that other person if the payment has been made by him to protect his own interest.

c) Obligation of person enjoying benefits of non-gratuitous 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: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a Bailee.

e) Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Question 19

Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount- of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother?

Answer –

(i) 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.
In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother

Question 20

Alpha Motor Ltd. agreed to sell a bike to Ashok under hire-purchase agreement on guarantee of Abhishek. The Terms were: hire-purchase price ` 96,000 payable in 24 monthly instalments of ` 8,000 each. Ownership to be transferred on the payment of last instalment. State whether Abhishek is discharged in each of the following alternative case under the provisions of the Indian Contract Act,1872:

(i) Ashok paid 12 instalments but failed to pay next two instalments. Alpha Motor Ltd. sued Abhishek for the payment of arrears and Abhishek paid these two instalments i.e. 13th and 14th. Abhishek then gave a

notice to Alpha Motor Ltd. to revoke his guarantee for the remaining months.

(ii) If after 15th months, Abhishek died due to COVID-19.

Ans)

According to section 130 of the Indian Contract Act, 1872, the continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors.

Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

A specific guarantee can be revoked only if liability to principal debtor has not accrued.

(ii) In the given question Ashok paid 12 instalments (out of total 24 monthly instalments) but failed to pay next two instalments. Abhishek (guarantor) paid the 13th and 14th installments but then he revoked guarantee for the remaining months.
Thus, Abhishek is not liable for installments that was made after the notice, but he is liable for installments made before the notice (which he had paid i.e. 13th and 14th installments)

(ii) According to section 131 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety.

However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

In the given question, Abhishek (guarantor) died after 15th month. This will operate as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety (i.e. Abhishek). However, the Abhishek's estate remains liable for the past transactions (i.e. 15th month and before) which have already taken place before the death of the surety.

Question 21

A' gives to 'M' a continuing guarantee to the extent of Rs. 8,000 for the fruits to be supplied by 'M' to 'S' from time to time on credit. Afterwards 'S' became embarrassed and without the knowledge of 'A', 'M' and 'S' contract that 'M' shall continue to supply 'S' with fruits for ready money and that payments shall be applied to the then existing debts between 'S' and 'M'. Examining the provision of the Indian Contract Act, 1872, decide whether 'A' is liable on his guarantee given to M.

Answer:

Discharge of surety by variance in terms of contract:

The problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

Question 22

'C' advances to 'B', Rs. 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 Rs. 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 Rs.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, Rs. 2,00,000 rupees on the guarantee of A. C has also taken a further security for Rs. 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. Rs. 80,000 and will remain liable for balance Rs. 1,20,000.

Question 23

Mrs. A delivered her old silver jewelry 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. Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? [MTP May 20, March 21, Nov 21]

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 Mrs. 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 24

Amar bailed 50 kg of high-quality sugar to Srijith, who owned a kirana shop, promising to give Rs.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 under the Indian Contract Act, 1872? (vimp)

Answer:

According to Section 157 of the Indian 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 sugar 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 25

What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872.

[Nov 18]

Answer:

As per the provisions of section 168 and 169 of the Indian Contract Act, 1872, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the

owner. But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

(i) when the article is in danger of perishing and losing the greater part of the value

or

(ii) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Question 26

Radheshyam borrowed a sum of ` 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ` 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ` 50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872?

Answer:

General lien of bankers: According to section 171 of the Indian Contract Act, 1872, bankers, factors, harbingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged. Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ` 50,000/-, which has already been fully repaid by Radheshyam.

Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ` 20,000/- (which is the second loan) is not valid.

Question 27

Mr. Yadav, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai. The vessel got stranded on a reef in the sea 300 miles from the destination.

The ship's managing agents signed a salvage agreement for Mr. Yadav. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Yadav refuse to reimburse the Salvor, as it is the Ship- owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained unterminated.

Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Yadav. Explain?

Answer:

Section 189 of Indian Contract Act 1872 defines agent's authority in an emergency. 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 certain circumstances, a person who has been entrusted with another' s property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to

recover the agreed sum from Mr. Yadav and not from the ship owner, as a lien on the goods.

Question 30

Mr. Navin owns a big car and has leased his car to Mrs. Susie. The lease agreement is terminable on three months' notice. Mr. Bhalla, not being authorised by Mr. Navin, demands on behalf of Mr. Navin, the delivery of the car and gives a notice of termination of lease agreement to Mrs. Susie who was in possession of the car at that time. Examine whether Mr. Navin can ratify the notice sent by Mr. Bhalla. Give your answer as per the provisions of the Contract Act, 1872.

Answer:

According to section 200 of the Indian Contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

Question 31

Pankaj appoints Shruti as his agent to sell his estate. Shruti, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to Pankaj. Shruti buys the estate herself after informing Pankaj that she (Shruti) wishes to buy the estate for herself but conceals the existence of Granite-Mine. Pankaj allows Shruti to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of Pankaj, the principal, against Shruti, the agent. Give your answer as per the provisions of the Contract Act, 1872.

What would be your answer if Shruti had informed Pankaj about the existence of Mine before she purchased the estate, but after two months, she sold the estate at a profit of Rs. 10 lac?

Answer:

Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction.

On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.

Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, he cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.

Question 32

What do you understand by Caveat Emptor under the Sale of Goods Act 1930? What are the exceptions to this rule?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly.

2. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

3. The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

4. The rule of caveat emptor does not apply in the following cases:
    a) Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section16(1).
    b) Sale under a patent or trade name: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1).

    Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2).
    d) Usage of trade: An implied warranty or condition as to qualify or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3).
    e) Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Question 33

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: -

Provision: [The Sale of Goods Act, 1930]

1. 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 merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

2. Implied Warrants under The Sale of Goods Act,1930 are as follows:
    a) 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.

    b) Warranty of freedom from 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.

    c) 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.

d) 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 34

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?

Answer: -

Provision: [The Sale of Goods Act, 1930]

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.

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.

Conclusion:

Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

Question 35

Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, 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 was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. 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.

2. Further Section 18 read with Section 23 of the Act provides 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 are 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.

3. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

Facts of Case:

1. Mr. Samuel agreed to purchase 100 bales from Mr. Varun and sent his men to take delivery of the same. Mr. Varun were able to pack only 60 bales.
2. Later on, there was accidental fire in Varun's place, due to which all the stock including those 60 bales to be delivered to Mr. Samuel was destroyed.

Conclusion:

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

a) 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. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.

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. Varun completely.

Question 36

J the owner of a car wants to sell his car. For this purpose, he hand 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 given reasons whether J would succeed.

Answer: -

Provision: [The Sale of Goods Act, 1930]

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)].

2. The buyer of goods form 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:

a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.

c) The buyer should act in good faith.
d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

Facts of Case:

In given case J handover his car to P a mercantile agent for sell at a price not less than 50,000. But agent sells the same for 40,000 to A who buys the same in good faith . P also misappropriated the money. J sues A to recover the car.

Conclusion:

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

Question 37

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

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). 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

8. Sale under the provisions of other Acts:

a) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

b) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

c) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Question 38

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".

Answer: -

Provision: [The Sale of Goods Act, 1930]

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:

1. 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.

2. 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.
3. 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.
4. 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.
5. 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.
    a) Right of lien and Right to stoppage the goods in transit- Distinction: The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
    b) 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 a carrier and
        iii. Buyer has not acquired the possession.
    c) 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.
    d) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.

Question 39

Mr. D sold some goods to Mr. E for Rs 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

Answer: -

Provision: [The Sale of Goods Act, 1930]

Position of Mr. D:

Mr. D sold some goods to Mr. E for Rs 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:

a) 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.

b) 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 Mr. D may sue Mr. E for pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

c) Suit for interest [Section 61]:

If there is no specific agreement between the Mr. D and Mr. E as to interest 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 40

What is the conclusive evidence of partnership? What is the true test of partnership?

Ans

Conclusive Evidence –

1. 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.
2. Each partner carrying on the business is the principal as well as an agent of other partners. Therefore, the act of one partner done on behalf of firm, binds all the partners.
3. 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.

True Test –

Provision: [Section 6 of Indian Partnership Act,1932]

2. 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.
    a) There was an agreement between all the persons concerned
    b) The agreement was to share the profits of a business and
    c) The business was carried on by all or any of them acting for all.
3. Agreement:

    Partnership is created by agreement and 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, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

4. Sharing of Profit:
    a) 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 persons partners.
    b) Although the right to participate in profits is a strong test of partnership, and 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.

c) 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.

d) 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.

e) 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.

5. 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 41

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. (Nov'18 RTP)

Answer: -

Provision:

1. 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.
2. The essential conditions before expulsion can be done are:
    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. The test of good faith includes:
        i) That the expulsion must be in the interest of the partnership.
        ii) That the partner to be expelled is served with a notice; and
        iii) That the partner has been given an opportunity of being heard.

Facts of case:
Ram & Co. consists of three partners A, B & C having one third share each in firm. As per A & B C is not able to contribute anything to partnership i.e., his activities are not in the interest of that partnership. Thus, they want to remove/expel C from Ram & Co.

Conclusionr:
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 42

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?

Answer: **-**

Provision:

1. 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.

2. The rights of such a transferee are as follows:
   a) During the continuance of partnership, such transferee is not entitled
   i) to interfere with the conduct of the business,
   ii) to require accounts, or
   iii) to inspect books of the firm.
   b) 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.
   c) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
   ii) to receive the share of the assets of the firm to which the transferring partner was entitled, and
   iii) For ascertaining the share, he is entitled to an account as from the date of the dissolution.

3. 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.
4. 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 43

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. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Answer: -

Provision: [Section 37 of Indian Partnership Act, 1932]

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.

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

a) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Facts of case:

A, B and C are partners in firm. As per the partnership deed, A is entitled to 20 % of partnership property and profits. A retires from firm and dies after 15 days. B and C without settling the accounts continue the partnership business.

Conclusion:

Based on the previously mentioned provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A shall be entitled, at his 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 44

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

that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

Answer:

Provision:

By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

Conclusion:

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

Question 45

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:

[Section 69 of Indian Partnership Act, 1932]

> 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 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.

2. 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.

Answer:

1. 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.
2. 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.
3. 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 46

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.

Answer: -

Provision: [Indian Partnership Act, 1932]

1. 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.
2. 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.

Answer:

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 for the dues towards Mr. X.

Question 47

"Indian Partnership Act does not make the registration of firm's 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. Also, explain the rights unaffected due to nonregistration of firms.

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 the consequences of Nonregistration 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 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. These disabilities briefly are as follows :

1. 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.
2. 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.
3. 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.
4. 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 48

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:-

Provision: [Section 2(62) of Companies Act,2013]

1. 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.

2. Rules regarding its membership:

b) 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.

c) 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.

d) Such other person may be given the right to withdraw his consent.

e) 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.

f) Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

g) Only a natural person who is an Indian citizen and resident in India or otherwise -

   i. shall be eligible to incorporate a OPC
   ii. shall be a nominee for the sole member of a OPC.
   iii. who has stayed in India for a period of not less than 120 days

h) No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

i) No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

3. OPC 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.

Conclusion:

Above are rules regarding one person company. As per provisions given it is one of the main condition for OPC that it cannot be get converted into a Section 8 i.e. non-profit organization.

Question 49

The Articles of Association of XYZ Ltd. provides that Board of Directors have authority to issue bonds provided the shareholders authorize such issue 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:-

Provision: [Companies Act, 2013]

2. 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.

3. 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.

4. 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.

Facts of case:

In given case articles of association of XYZ Ltd. Provides that BOD have authority to issue bonds provided it need to be authorized by resolution passed in general meeting by shareholders of company. Company issued bonds to Mr. X without passing any resolution in general meeting of shareholders. Answer: 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 50

Krishna, an assessee, 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:-

Provision: [Companies Act, 2013]
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.

2. 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.
3. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.
4. This is based on the concept called Lifting of Corporate Veil in which by lifting the veil court sees the persons who are actually liable for the misconduct done by such persons who acts behinds the veil of company.

Facts of case:

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

Conclusion:

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 assessee as pretended loans.

Question 51

The paid-up share capital of SAB Pvt. Ltd. is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. JVN Pvt. Ltd. and SARA Pvt. Ltd. are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Pvt. Ltd. JVN Pvt. Ltd. and SARA Pvt. Ltd. are the subsidiaries of PQR Pvt. Ltd. With reference to the provisions of the Companies Act, 2013, examine whether SAB Pvt. Ltd. is a subsidiary of PQR Pvt. Ltd.? Would your answer be different if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of SAB Pvt. Ltd.?

Answer-

Provision: [Section 2(87) of Companies Act, 2013]

1. Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.

2. Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
    a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or

b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or

3. Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Facts of case:

The paid-up share capital of SAB Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited

Conclusion:

In the first case, the SAB Pvt. Ltd. will not be the subsidiary of the PQR Pvt. Ltd. as JVN Pvt. Ltd. and SARA Pvt. Ltd. are the subsidiaries of PQR Pvt. Ltd. but they do not hold more than one-half of the share capital of SAB Pvt. Ltd. Hence, SAB Pvt. Ltd. is the holding company of JVN Pvt. Ltd. and SARA Pvt. Ltd. but not a subsidiary of PQR Pvt. Ltd.
If, PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of SAB Pvt. Ltd., so, it implies that the PQR Pvt. Ltd. controls the composition of the Board of Directors of SAB Pvt. Ltd. and hence be the holding company of the SAB Pvt. Ltd.

Question 52

The K Ltd. was in the process of incorporation. The Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result, supplier sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for the payment under the following situations:

a) When the company has already adopted the contract after incorporation?
b) When the company makes a fresh contract with the suppliers in substitution of pre incorporation contract

Answer:-

Provision: [Companies Act, 2013]

1. Pre-incorporation contracts are those contracts which are entered into, by the promoters on behalf of a prospective company, before it has come into existence e.g. with the proprietor of business to sell it to the prospective company.
3. Under section 9 of the Companies Act, 2013 a company comes into existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned. The right to enter into contracts, sue or get sued arises only on the incorporation of the company as stated in section 9. Before its incorporation a company does not exist.

4. Being nonexistent, it can neither act in its own behalf nor expressly or implicitly appoint agents to act on its behalf.

5. Further, under the principle of constructive notice, every person entering into a contract with a company is presumed to have knowledge of its documents such as the Memorandum, Articles an resolutions passed by members as these are public documents available for scrutiny at the registered office of a company.

6. Hence, a person who enters into a pre incorporation contract with the promoters does so at his own peril.

Fact of case:

K Ltd. was in the process of incorporation. The Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could

not be paid by the company for the purchase of above furniture. As a result, supplier sued the promoters of the company for the recovery of money.

Conclusion:

a) If there was already a contract between the suppliers and promoters even after incorporation, the promoters shall be personally liable for the failure of payment to the suppliers. Company will not be held liable.
b) If the company makes a fresh contract with the suppliers in substitution of pre- incorporation contract, the liability of the promoters will come to an end and the company shall be liable to pay to the suppliers.

Question 53

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the chairman of the Company acquired the knowledge of arranging finance for the development land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorises the company to carry on any other trade or business which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 1956 examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

Answer:-

Provision: [Companies Act, 2013]

1. As per the provisions of the Companies Act, 2013, the meaning of the term 'ultra vires' is simply "beyond powers". The acts done by the company beyond its object clause of the Memorandum of Association are void.

2. 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.

3. In the leading case law of Ashbury Railway Carriage and Iron Company Limited V. Riche, the main business of the company was to make, sell or lend on hire,

railway carriages or wagon and to carry on the business of mechanical engineers and general contractors.

4. The directors of the company entered into a contract with Riche for financing the construction of a railway line in Belgium and the company further ratified this act of the directors by passing a special resolution.

5. Riche, however, repudiated the contract as being ultra vires and the company brought an action for damages for breach of contract. Its contention was that the contract was well within the meaning of the word 'general contractors' and hence within its powers.

6. The court decided that the term 'general contractors' was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If the term 'general contractors' was not so interpreted, it would authorize the making of contracts of any kind and every description

Fact of case:

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the chairman of the Company acquired the knowledge of arranging finance for the development land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorizes the company to carry on any other trade or business, which can, in the opinion of the board of directors, be advantageously carried on, by the company in connection with the company's general business.

Conclusion:

Here, arranging finance or financier is an ultra vires act since, it falls outside the object clause of memorandum. An object contained in the object clause is not valid if it authorizes the company to carry on any other trade or business which can be advantageously carried on by the company.

a) The company has no power to arrange finance or financier.
b) The Board cannot take the defence that the memorandum authorizes the company to carry on any business which can be advantageously carried on in

connection with company's present business because it is a specified purpose for alternation of object clause.

Question 54

Mr. A is an Indian citizen and his stay in India during immediately preceding financial year is for 115 days. He appoints Mr. B as his nominee who is a foreign citizen but has stayed in India for 130 days during immediately preceding financial year.

1. Is Mr. A eligible to be incorporated as a One Person Company (OPC). If yes, can he give the name of Mr. B in the memorandum of Association as his nominee to become the member after Mr. A's incapacity to become a member.
2. If Mr. A has contravened any of the provisions of the Act, what are the consequences?

Answer

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.

(i) In the given case, though Mr. A is an Indian citizen, his stay in India during the immediately preceding previous year is only 115 days which is below the requirement of 120 days. Hence Mr. A is not eligible to incorporate an OPC. Also, even though Mr. B'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. Hence B's name cannot be given as nominee in the memorandum.

Since Mr. A is not eligible to incorporate a One Person Company (OPC), he will be contravening the provisions, if he incorporates one. He shall be punishable with fine which may extent to ten thousand rupees and with a further fine which may extent to One thousand rupees every day after the first during which such contravention occurs.

Question 55

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

(a) Whether Jagannath Oils Limited is required to reduce the number of members.

(b) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?

Answer

Answer

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

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that— (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

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

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

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

Negotiable Instrument Act

Question 56

What are the essential characteristics of Negotiable Instruments?

Answer:

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Question 57

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 Indi an Act, 1934 and cannot be legally.

Question 58

Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

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 Umesh. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note 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 Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj 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 promissory note.

Question 59

A bill of exchange is drawn by 'A' in Berkley where the rate of interest is 15% and accepted by 'B' payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured.

An action on the bill is brought against 'B' in India.

Advise as per the provisions of the Negotiable Instruments Act, 1881, what rate of interest 'B' is liable to pay?

Answer:

According to section 134 of the Negotiable Instruments Act, 1881, in the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

In the given case, since action on the bill is brought against B in India, he is liable to pay interest at the rate of 6% only.

Question 60

Mr. Harsha donated ` 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on, he found that the NGO was a fraud and did not engage in philanthropic activities.

He gave a "stop payment" instruction to his bankers and the cheque was not honored by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881.

Ans

In the given instance, Mr. Harsha donated ` 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honored by the bank to the NGO.

Question 61

Rahul drew a cheque in favour of Aman. After having issued the cheque; Rahul requested Aman not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Aman. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Rahul constitute an offence?

Answer:

As per the facts stated in the question, Rahul (drawer) after having issued the cheque, informs Aman (drawee) not to present the cheque for payment and as well as gave a stop payment request to the bank in respect of the cheque issued to Aman.

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 Rahul, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881


CA INTERMEDIATE MAY 25
Early Bird Batch
Starting 8th July
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Corp. Law & Auditing
CA Indresh Gandhi
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CA Vivek Gaba
Taxation
CA Pranav Popat
Costing
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