

CH. 1: THE INDIAN CONTRACT ACT, 1872

UNIT 1: Nature of Contracts

Question No. 1 * *Important*

Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his Acceptance by post. Next day, Ramanathan sends a telegram withdrawing his Acceptance. Examine the Validity of the Acceptance According to the Indian Contract Act, 1872 in the light of the following:

- a. The telegram of revocation of acceptance was received by Ramaswami before the letter of Acceptance.
- b. The telegram of revocation and letter of Acceptance both reached together.

Answer: -

Provision: Section 4 of Indian Contract Act, 1872

1. The problem is related with the communication and time of Acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of An Acceptance is complete as against the Acceptor when it comes to the knowledge of the proposer.
2. The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him to be out of the power of the acceptor.
3. The communication of a revocation is complete, as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, to be out of the power of the person who makes it; & as against the person to whom it is made, when it comes to his knowledge.

Facts of Case:

In given case Ramaswami wants to sell his house to Ramanathan and Ramanathan also sent his acceptance by post. But afterwards the next day Ramanathan changed his mind and sends a telegram for withdrawing his acceptance.

Conclusion:

1. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
2. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Question 2
A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R. And R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contract Act, 1872?

Answer: -

Provision: [Indian Contract Act, 1872]

Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Going by the definition we can say that a contract in which the terms of the agreement are not expressed in written or oral form is an implied contract.

Facts of Case:

In given case a coolie without being asked picks up the luggage of R to be carried out of the railway station and R allows him to do so.

Conclusion:-

In the present case, it is an implied contract and R must pay for the services of the coolie.

Question 3

Point out with reason whether the following agreements are valid or void:

1. Kamala promises Ramesh to lend Rs 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her
2. Sohan Agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of Agreement.
3. Ram sells the goodwill of his shop to Shyam for Rs 4, 00,000 and promises not to carry on such business forever and anywhere in India.
4. In An Agreement between Prakash and Girish, there is A Condition that they will not institute legal proceedings against each other without consent.
5. Ramamurthy, who is A Citizen of India, enters into An Agreement with An Alien friend.

Answer: - **Provision:** [Indian Contract Act, 1872]

1. **Valid Contract:** A valid contract is enforceable by law and if a contract is not valid it may lead to obstruction of businesses and unlawful and insincere dealings.
2. **Void Agreement:** An agreement not enforceable by law is said to be void.
3. **Voidable contract:** An agreement, which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the others, is a voidable contract.
4. **Void Contract:** A contract, which ceases to be enforceable by law, becomes void when it ceases to be enforceable.
5. **Illegal Contract:** An agreement that leads to one or all the parties breaking a law or not conforming to the norms of the society is deemed illegal by the court. A contract opposed to public policy is also illegal.

Conclusion:

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

Question 4

Decide with reasons whether the following Agreements Are Valid or void under the provisions of the Indian Contract Act, 1872:

1. Vijay Agrees with Saini to sell his black horse for Rs 3,00,000. Unknown to both the Parties, the horse was dead at the time of the Agreement.

2. Sarvesh sells the goodwill of his shop to Vikas for Rs 10, 00,000 and promises not to carry on such business forever and anywhere in India.

3. Mr. X Agrees to write A book with A publisher. After few days, X dies in An Accident.
Answer: -

Provision: [Indian Contract Act, 1872]

1. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.
2. Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid.
3. As per section 2(j) of the Contract Act, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".

Conclusion:

1. In this case, there is mistake of fact as to the existence of the subject - matter, i.e., with respect to the selling of horse which was dead at the time of the agreement. It is unknown to both the parties. Therefore, it is a void agreement.
 2. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.
- In the present case, Mr. X Agrees to write A book with A publisher. After few days, X dies in An Accident. Here the contract becomes void due to the impossibility of performance of the contract.

Question 5

Distinction between Void and Illegal Agreements.

Answer: -

Provision: [Indian Contract Act, 1872]

1. **Void and Illegal Agreements:** According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement.
2. One of these factors is unlawfulness of object and consideration of the contract i.e., illegality of the contract which makes it void.
3. Despite the similarity between an illegal and a void agreement that in either

case the agreement is void and cannot be enforced by law, the two differ from each other in the following respects

- a) **Scope:** An illegal agreement is always void while a void agreement may not be illegal being void due to some other factors e.g., an agreement the terms of which are uncertain is void but not illegal.
- b) **Effect on collateral transaction:** If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.
- c) **Punishment:** Unlike illegal agreements, there is no punishment to the parties to a void agreement.
- d) **Void ab-initio:** Illegal agreements are void from the very beginning, but sometimes-valid contracts may subsequently become void.

Question 6

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

1. A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
2. Obligation of finder of lost goods to return them to the true owner
3. A contract with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory and everything was destroyed.

Answer: [Indian Contract Act, 1872]

1. It is an implied contract and A must pay for the services of the coolie.
Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.
2. Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.
Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exist. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of

either party to make a contract but law imposes a contract upon the parties.

3. The above contract is a void contract.

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

Question 7

P Comment on the following statements:

1. Acceptance must be absolute and unqualified.
2. Acceptance must be in the prescribed mode.

Answer: -

[Indian Contract Act, 1872]

1. Acceptance must be absolute and unqualified: As per section 7 of the Indian Contract Act, 1872 acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for ` 2 lakhs?" If 'B' replies "I shall purchase your car for ` 2 lakhs, if you buy my motorcycle for ` 50000/-, here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

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

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror

informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

Question 8

Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

Answer: -

Provision: [Indian Contract Act, 1872]

1. The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
2. The following are important essentials of an offer: -
 - a. Must be capable of creating legal relation.
 - b. Must be certain, definite and not vague.
 - c. Must be communicated.
 - d. Must be made with a view to obtaining the assent of the other party
 - e. May be conditional
 - f. Offer should not contain a term the non-compliance of which would amount to acceptance
 - g. May be general or specific
 - h. May be expressed or implied
 - i. A statement of price is not an offer
3. Offer and an Invitation to an offer:
 - a. In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offer or to be bound by the offer should the other party chooses to accept it.
 - b. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence, the only thing that is required is the willingness of the offeree to abide by the terms of offer.

A sends an offer to B to sell his second car for ₹ 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?

Answer: -

Provision: [Indian Contract Act, 1872]

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

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

Conclusion:

Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So, in the given problem, if B remains silent, it does not amount to acceptance.

Question 10

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 11

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

Answer: -

Provision: [Indian Contract Act, 1872]

Modes of revocation of Offer can be explained as follow:

1. By notice of revocation
2. By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
3. By non-fulfillment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
4. By death or insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
5. By counteroffer
6. By the non- acceptance of the offer according to the prescribed or usual mode
7. By subsequent illegality

Question 12

Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for ₹ 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract.

Answer -

As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The fact of impossibility may be known or unknown to the promisor or promisee. It may be added by clarification here that the term "contract" shall be understood as an "agreement".

Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void. In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio). Hence, this contract is void being not enforceable by law.

Question 13

Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of ₹ 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of ₹ 10,000 to Mr. Vikram with the words, "An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward." State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of ₹ 10,000.

Answer -

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer.

Acceptance of an invitation to an offer does not result in the contract and only an offer

emerges in the process of negotiation. But there is an exception to above provisions.

When advertisement in newspaper is made for reward, it is the general offer to public. On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay ₹ 10,000 to Mr. Vikram.

10,000 to Mr. Vikram

Question 14

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

Answer -

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

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

Later, the management of the school appointed someone else as a principal. On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent.

The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

UNIT 2: CONSIDERATION

Question 1

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

Answer: -

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

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 promisee 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:

1. 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 enforce the promise of Ms. Reema, the

2. 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 2

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it.
2. Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.
3. The previously mentioned rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:
 - a) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
 - b) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
 - c) In the case of certain marriage contracts, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
 - d) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.
 - e) Acknowledgement or estoppel - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

- f) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.
- g) Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Conclusion:

Therefore, even though stranger to a contract cannot sue but in some cases it can do the same which are known to be the exception to the Doctrine of privity of contract as mentioned above.

Question 3

No consideration, no contract" Comment.

Or

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honor, but it does not cause a legal responsibility.
2. No consideration, no contract is a general rule. However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and binding. These exceptions are as follows:
 - a. Agreement made on account of natural love and affection: Section 25 (1) provides that if an agreement is (i) in writing (ii) registered under the law and made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration. Thus, where A, for natural love and affection, promises to give his son, B, ₹ 10,000 in writing and registers it. This is a valid contract.
 - b. Compensation for services voluntarily rendered: Section 25(2) provides that something which the promisor was legally compelled to do; (iii) and the promisor was in existence at the time when the act was done whether he was competent to contract or not (iv) the promisor must agree now to compensate the promisee. Thus, when A finds B's purse and gives it to him and B promises to give A ₹ 50,

this is a valid contract.

- c) Promise to pay time-barred debts [Section 25 (3)]: Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration. If A owes B ₹ 1,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay ₹ 500 on account of this debt, it constitutes a valid contract.
- d) Contract of agency (Section 185): No consideration is necessary to create an agency.
- e) Completed gift (Explanation 1 to Section 25): A completed gift needs no consideration. Thus, if a person transfers some property by a duly written and registered deed as a gift he cannot claim back the property subsequently on the ground of lack of consideration.

Question 4

Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872?

Answer: -

Provision: [Indian Contract Act, 1872]

Consideration [Section 2(d) of the Indian Contract Act, 1872]: When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Legal Rules Regarding Consideration

1. Consideration must move at the desire of the promisor: Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration
2. Consideration may move from promisee or any other person: In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract

3. Executed and executory consideration: A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
4. Consideration may be past, present or future: It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
5. Consideration need not be adequate: Consideration need not be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
6. Performance of what one is legally bound to perform: The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence such a contract is void for want of consideration.
7. However, where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.
8. Consideration must be real and not illusory: Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
9. Consideration must not be unlawful, immoral, or opposed to public policy. Only presence of consideration is not sufficient it must be lawful. Anything, which is immoral or opposed to public policy, also cannot be valued as valid consideration.

Question 5

Mr. Ramesh promised to pay ₹50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

Answer: -

Provision: [Indian Contract Act, 1872]

1. Intention to create legal relations is part of elements in contract. Intention to create legal relations is defined as an intention to enter a legally binding agreement or contract. Intention to create legal relations is one of the necessary elements in formation of a contract.
2. In addition, with no intention to create legal relations, it will make any contract to become a mere promise. Mere promises simply like a simple promise arise when there is no intention to create legal relation.
3. There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.
4. Domestic and social agreements of intention to create legal relations can be broken down into three groups, which are firstly commercial, or business relations, secondly social friend's relations and thirdly family or domestic relations.

Facts of case:

In above case Mr. Ramesh promised his wife to pay Rs.50,000. So, Mrs. Lali can spend this on her birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh did same and written agreement was registered under law but he fails to pay specified amount and Mrs. Lali wants to file a suit against Mr. Ramesh.

Conclusion:

Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

Question 6

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 whoever 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?

Answer: -

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. *Contract*
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, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

Conclusion:

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

Question 7

Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

Answer -

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.

UNIT3: Other Essential Elements of a Contract

Question 1

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?

Answer: -

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 2

A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher.

Answer: -

Provision: [Indian Contract Act, 1872]

1. 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.
2. In particular and without prejudice to the generality of the foregoing principle, 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 where he stands in a fiduciary relation to the other; or
 - b. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected because of age, illness, or mental or bodily distress.

Conclusion:

Yes, the student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought because of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused

Question 3

* Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.

Answer: -

Provision: [Indian Contract Act, 1872]

Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him. A minor cannot become a partner in a partnership firm. However, he may, with the consent of all partners, be admitted to the benefits of partnership.

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

Question 4

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 necessities of life to him. It says that though minor is not personally liable to pay the price of necessities 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 necessities 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 5

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

Answer: -

Provision: [Indian Contract Act, 1872]

A person is deemed to be in such position in the following circumstances:

1. **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
2. **Fiduciary relationship:** where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.
3. **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.
4. **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

Conclusion:

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

Question 6

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 7

X, a minor was studying in M.Com. in a college. On 1st July 2019 he took a loan of ` 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December 2019. X possesses assets worth ` 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed.

Answer: -

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.

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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 necessities of life to him. It says that though minor is not personally liable to pay the price of necessities 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 necessities 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:

In given question X, a minor was studying in M.Com. in a college. he took a loan of ` 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December 2019. X possesses assets worth ` 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets.

Conclusion:

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

Since the loan given to X is for the necessities suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Question 8

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

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

Answer: -

Provision: [Indian Contract Act, 1872]

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

Conclusion:

Hence, in the instant case,

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

Question 9

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.

Answer: -

Provision: [Section 18 of Indian Contract Act, 1872]

According to Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

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

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

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

Facts of case:

In given case sohan induced Suraj to buy his motorcycle by saying that it is in very good condition but afterwards Suraj complained that there were many defects in motorcycle.

Sohan promised to pay 40 % cost of repairs. After some days the motorcycle did not work well and now Suraj wants to rescind the contract.

Conclusion:

In the instant case, 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. 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 10

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

Answer: -Provision: [Indian Contract Act, 1872]

1. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."
2. Effects of coercion under section 19 of Indian Contract Act, 1872:
 - a. Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

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

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

Question 11

Distinguish between wagering agreement and contract of insurance.

Answer: -

Provision: [Indian Contract Act, 1872]

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

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

Question 12

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

Answer: -

Provision: [Indian Contract Act, 1872]

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

- the suggestion, as a fact, of that which is not true, by one who does not believe it to be true.
- the active concealment of a fact by one having knowledge or belief of the fact.
- a promise made without any intention of performing it.
- any other act fitted to deceive.

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

Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e., let the purchaser beware is the rule applicable to contracts.

There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Question 13

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.
2. It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.
3. The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.
4. Under the following circumstances silence is treated as fraud they are as follow:
 - a) Duty of person to speak: Where the circumstances of the case are such that it is the duty of the person observing silence to speak. Following contracts come within this category:
 - i. Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

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- ii. Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.
 - iii. Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.
 - iv. Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.
 - v. Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.
- b) Where the silence itself is equivalent to speech: For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

Question 14

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

Answer: -

Provision: [Section 16 of Indian Contract Act, 1872]

The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

1. Relation between the parties: A person can be influenced by the other when a near relation between the two exists.
2. Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:
 - a) Real and apparent authority: Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
 - b) Fiduciary relationship: Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.

- c) **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.
- d) **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.
- 3 **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.
- 4 **Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Question 15

A student was induced by his teacher to sell his brand-new bike to the latter at a price less than the purchase price to secure more marks in the examination. Accordingly, the bike was sold. However, the father of the student persuaded him to sue his teacher. Whether the student can sue the teacher? If yes, on what grounds?

Answer -

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused. The relation of teacher and student is as such that the teacher is in a position to dominate the will of the student. As a result, the consent of the student is caused by an undue influence.

Hence, the contract between them is voidable at the option of the student, and therefore, he can sue the teacher.

Question 16

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 17

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

Answer: -

According to Section 24 of the Indian Contract Act, 1872, in an agreement, where some part of the object is legal and the other part is illegal, the question arises about the validity and enforceability of such agreements.

Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.

In the given case, A sells the house to B, is a valid transaction

In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e., ₹10,00,000 is valid and enforceable.

However, the agreement to pay ₹50,000 for gambling done in the house is illegal and thus void. Hence, in the instant case, sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law.

Question 17

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 18

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 void 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 he 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 19

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

Answer -

Agreement - the meaning of which is uncertain (Section 29 of the Indian Contract Act, 1872): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.

For example.

A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil because in such a case its meaning would be capable of being made certain

UNIT-4 PERFORMANCE OF CONTRACT

Question 1

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: - ₹6,00,000

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 [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 2

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

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

Facts of Case:

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

Conclusion:

Therefore, by considering the above provisions and facts of the case here X paid the whole amount ₹3,00,000 to D. He will receive ₹20,000 from Y (1/5th of ₹1,00,000) and ₹1,40,000 from Z (₹1,00,000 of his part of debt and ₹40,000 of the debt of ₹80,000 from Vijay's part which shall be paid by Sanjay & Ajay due to insolvency of Vijay.)

Question 3

A received certain goods from B promising to pay Rs 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for Rs 1,00,000. Discuss whether the contention of B is right?

Answer: -

Provision: [Indian Contract Act, 1872]

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

Facts of Case:

In given case A received certain goods from B promising to pay Rs. 1,00,000. Afterwards A is unable to make the payment to B. C who is known to A make payment of Rs. 60,000 to B on A's behalf. A was not aware of the transaction between B & C.

Conclusion:

As C made the payment of Rs. 60,000 to B on behalf of A, now B can sue A only for the balance amount i.e., Rs. 40,000.

Question 4

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

Answer: -

An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

For example, A agrees to pay ₹50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

2. Transactions resembling with wagering transaction but are not void
- Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
 - Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers
 - Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹1,000.
 - A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements

Question 5

The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts.

Answer: -

Provision: [Section 37 of Indian Contract Act, 1872]

- The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.
- Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

Example 1:

A promise to deliver goods to B on a certain day on payment of ₹1,00,000. A die before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹1,00,000 to A's representatives.

Example 2:

A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill.

2. Analysis of Section 37

- A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.
- The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise.
- Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise.
- He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Conclusion:

Thus, from above it can be drawn that performance may be actual or offer to perform.

Question 6

X, Y and Z jointly borrowed ₹50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- Y can recover the contribution from X and Z,
- Legal representatives of X are liable in case of death of X,
- Y can recover the contribution from the assets, in case Z becomes insolvent.

Answer: -

Provision: [Indian Contract Act, 1872]

1. Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise.
2. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.
3. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several".
4. Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.
5. Section 43 deals with the contribution among joint promisors. The promisors may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

Conclusion:

As per the provisions of above sections,

- i. Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- ii. Legal representative of X is liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- iii. Y also can recover the contribution from Z's assets.

Question 7

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 adjust ₹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. Datamal 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. Datamal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts

Question 8

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.
- (c) 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 9

Mr. X was a Disk Jockey at a five-star hotel bar. As per the contract, he is supposed to perform every weekend (i.e., twice a week). Mr. X will be paid ₹ 1500 per day. However, after a month, Mr. X willfully absents himself from the performance.

- (i) Does the hotel have the right to end the contract?
- (ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the cases - (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?

Answer -

By analysing Section 39 of the Indian Contract Act 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee)

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers. In the given case,

- (i) Yes, the hotel has the right to end the contract with Mr. X, the DJ.
- (ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently.
- (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

UNIT 5: - BREACH of CONTRACT and ITS REMEDIES

Question 1

"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 4 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 2 - 6 marks

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

Answer: -

Provision: [Section 73 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:

1. In given case M Ltd contracted to make & deliver certain machinery for Rs. 11.50 lakhs to Shanti Traders but due to labour strike, M Ltd could not manufacture the machinery.

1. Later Shanti Traders procured the machinery from another manufacture for Rs. 12.75 lakhs
2. Due to failure to provide machinery by M Ltd, Shanti Traders were unable to perform contract, which it had made with Zenith Traders and were compelled to pay compensation for breach of contract.

Conclusion: -

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of Rs. 1.25 lakh (i.e., Rs 12.75 minus Rs 11.50 = Rs 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd. knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

Question 3

PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30 June 2017 for Rs 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for Rs 22.75 lakhs. Gupta Traders was also prevented from performing a contract, which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Calculate the amount of compensation, which Gupta Traders can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer: -

Provision: [Section 73 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.

1. Such compensation is not to be given for any remote and indirect loss or damage sustained because of the breach.
2. 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.
3. 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:

1. In given case PM Ltd contracted to make & deliver certain machinery for Rs. 21.50 lakhs to Gupta Traders but due to labour strike, PM Ltd could not manufacture the machinery
2. Later Gupta Traders procured the machinery from another manufacture for Rs. 22.75 lakhs.
3. Due to failure to provide machinery by PM Ltd, Gupta Traders were unable to perform contract, which it had made with Zenith Traders and were compelled to pay compensation for breach of contract.

Conclusion: -

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of Rs 1.25 lakhs (i.e., Rs 22.75 lakhs - Rs 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also Obligated to reimburse the compensation, which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise, PM Ltd. is not liable for that.

Question 4

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

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).

Question 5

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

Answer: -

Provision: [Indian Contract Act, 1872]

1. Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.
2. Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.
3. terms of Section 74 of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

4. Explanation to Section 74:

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

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high

5. *Sri Chinni Lal vs. Mehta & Sons Ltd (Supreme Court)*: Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

Question 6

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

Answer: -

Provision: [Indian Contract Act, 1872]

- Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e., as much as the party doing the service has deserved.
- It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.
- For the application of this doctrine, two conditions must be fulfilled:
 - It is only available if the original contract has been discharged.
 - The claim must be brought by a party not in default.
- The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.
- The claim for quantum meruit arises in the following cases:
 - when an agreement is discovered to be void or when a contract becomes void.

- b) When something is done without any intention to do so gratuitously.

- c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.

- d) When one party abandons or refuses to perform the contract.

- e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

- f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

Question 7

What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

Answer: -

Provision: [Indian Contract Act, 1872]

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

Question 8

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

Answer -

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him.

General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages.

However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant.

If no special notice is given, then the aggrieved party can only claim the ordinary damages. In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities.

Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

UNIT 6:- CONTINGENT AND QUASI CONTRACTS

Question 1

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 event becomes impossible (Sec. 33).
- c) If a contract is contingent upon, how a person will act at an unspecified time the event 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 2 *

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

Answer: -

Provision: [Indian Contract Act, 1872]

- Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'.
- Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.
- The salient features of a quasi-contract are:
 - It does not arise from any agreement of the parties concerned but is imposed by law.
 - Duty and not promise is the basis of such contract.
 - The right under it is always a right to money and generally though not always to a liquidated sum of money.
 - 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

Question 3 *

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

Answer: -

Provision: [Indian Contract Act, 1872]

- A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happening (Section 31).
- It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen.
- For example, A contracts to pay B ` 10,000 if he is elected President of a particular association. This is a contingent contract.
- The essential characteristics of a contingent contract may be listed as follows:
 - There must be a contract to do or not to do something,
 - The performance of the contract must depend upon the happening or non- happening of some event.
 - The happening of the event is uncertain.
- The event 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 event should neither be a performance promised, nor the consideration for the promise.
- The contingent event 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.

The rules regarding the contingent contract are as follows:

- Contingent contract dependent on the happening of an uncertain future cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void. (Section 32).
- Where a contingent contract is to be performed if a particular event does not happen performance can be enforced only when happening of that event becomes impossible (Section 33).

3. If a contract is contingent upon, how a person will act at an unspecified time, the event 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 and 35).
4. The contingent contracts to do or not to do anything if an impossible event happens, are void whether the fact is known to the parties (Section 36).

Question 4

Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872.

Answer: -

Provision: [Indian Contract Act, 1872]

- Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as "quasi-contracts" as they create some obligations as in the case of regular contracts.
- Quasi-contracts are based on the principles of equity, justice and good conscience.
- The salient features of quasi-contracts are:
 - such a right is always a right to money and generally, though not always, to a liquidated sum of money.
 - does not arise from any agreement between the parties concerned but the obligation is imposed by law and.
 - The rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.
- Circumstances Identified as Quasi-Contracts:
 - Claim for necessities supplied to persons incapable of contracting: Any person supplying necessities 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 necessities, reimbursement can be claimed.

- 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.
- 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.
- 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.
- 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.
- In all the above cases contractual liability arises without any agreement between the parties.

Question 5

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

Answer: -

Provision: [Indian Contract Act, 1872]

- Finder may claim compensation for the trouble and expenses incurred by him to preserve the goods and to find out the true owner.
- If the owner refuses to pay compensation then may retain the goods until he receives it. However, he cannot make a suit for this.
- If any reward has been announced by the owner, he has a right to claim such reward. He can even sue for the reward.
- Normally he cannot sale the goods but when real owner is not found out with reasonable diligence, or if owner refuses to pay lawful charges then he can sale in the market if it

5. He can sale goods when the article is in danger of being perished or losing the greater part of its value. He can sale goods when the lawful charge of the finder amounts to two-thirds or more of the value of the article found.

Conclusion:

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

Question 6

PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of ` 1,00,000 if Dr. A test positive for novel corona virus (Covid-19) during the contract period of 3 months. Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19.

Answer -

Section 31 of the Indian Contract Act, 1872 provides that "A contract to do or not to do something, if some event, collateral to such contract, does or does not happen" is a Contingent Contract.

Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible

In the instant case, the contract between PQR hospital & Dr. A is a Contingent Contract because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of ` 1,00,000, only if he contracts with Covid 19 within a span of 3 months.

In Case, if Dr. A does not contract Covid 19, then the contract stands void automatically.

MISCELLANEOUS

Question 1

What will be rights with the promisor in following cases?

Explain with reasons:

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

Answers: -

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

CH. 2: SALES OF GOODS ACT, 1930

UNIT 1: Formation of Contract of Sale

Question 1 ^{RTP}

What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected

Answer: -

Provision: [The Sale of Goods Act, 1930]

- In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made, the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.
- This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
- In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
- It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question 2

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

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Answer: -

Provision: [The Sale of Goods Act, 1930]

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- There must be at least two parties
- The subject matter of the contract must necessarily be goods
- A price in money (not in kind) should be paid or promised.
- A transfer of property in goods from seller to the buyer must take place.
- A contract of sale must be absolute or conditional [section 4(2)].
- All other essential elements of a valid contract must be present in the contract of sale

Answer:

Above given are the essential elements that must be present in contract of sale.

Question 3

Classify the following transactions according to the types of goods they are:

- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. *ascertained goods*
- A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop. *unascertained goods*
- T agrees to sell to S all the oranges which will be produced in his garden this year. *future goods*

Answer: -

Provision: [The Sale of Goods Act, 1930]

- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which

packet is to be delivered.

- c) T agrees to sell to S all the oranges, which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

Question 4

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. **Difference between Condition and Warranty**
 - a) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
 - b) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
 - c) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.
2. According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:
 - a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
 - b) Where the buyer elects to treat the breach of condition as breach of a warranty
 - c) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
 - d) Where the fulfilment of any condition or warranty is excused by law due to impossibility or otherwise.

BY CA INDRESH GANDHI

Question 5

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 notwithstanding 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.
6. Right of lien and Right to stoppage the goods in transit- Distinction:
 - a) 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 6

Describe the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?

Answer: -

Provision: [The Sale of Goods Act, 1930]

- According to Section 45 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.
 - A bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.
- Right of stoppage of goods in transit: When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.
- However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
 - The seller must be unpaid.
 - The seller must have parted with the possession of goods.
 - The goods must be in the course of transit.
 - The buyer must have become insolvent.
 - The right is subject to provisions of the Act.

Question 7 ✖

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:

- 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.
- Suit for damages for non-acceptance (Section 56):
Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
- Suit for interest [Section 61]:
If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

UNIT 2: Conditions & Warranties

Question 1

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. (Section 16(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)).
 - c) **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

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- 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 quality 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 2

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

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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 3

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Difference between Condition and Warranty

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

2. According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
- b) Where the buyer elects to treat the breach of condition as breach of a warranty.

- c) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- d) Where the fulfilment of any condition or warranty is excused by law due to impossibility or otherwise.

Question 4

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty.
2. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
3. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
4. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Facts of Case:

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

Conclusion:

Ram is therefore entitled to reject the car and have refund of the price.

Question 5 ✪

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim 'Caveat Emptor' meaning thereby 'Let the buyer be aware'.

In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract.

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

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

1. Fitness as to quality or use:

Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

2. Goods purchased under patent or brand name:

In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.

3. Goods sold by description:

Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.

4. Goods of Merchantable Quality:

Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to

have not been revealed by ordinary examination.

1. Sale by sample:

Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.

2. Goods by sample as well as description:

Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition.

3. Trade Usage:

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.

4. Seller actively conceals a defect or is guilty of fraud:

Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case, the buyer has a right to avoid the contract and claim damages.

Question 6 ✪

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]:

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

2. Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

3. The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that Description. It does not imply any legal right or legal

title to sell.

Example: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

4. Condition as to wholesomeness:

In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Question 7

Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim?

Answer: -

Provision: [The Sale of Goods Act, 1930]

Essentials of Sale:

The problem as given in the question is based on Section 16(2) of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Though the term present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used.

Conclusion:

In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2), Mr. Amit would succeed in claim for

damages from the owner of the shop.

Question 8

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 9

What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section

Section 7, a contract for the sale of specific goods is void if at the time when the contract was made, the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

2. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
3. In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
4. It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question 10 ✕

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

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

Question 11

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

Answer: -

Provision: [The Sale of Goods Act, 1930] The term means, "None can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

1. Sale by a Mercantile Agent:

A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely

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

2. Sale by one of the joint owners:

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

3. Sale by a person in possession under voidable contract:

A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

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 without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)].

5. Sale by buyer obtaining possession before the property in the goods has vested in him:

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

6. Sale by an unpaid seller:

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

7. Sale under the provisions of other Acts:

- Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
- Purchase of goods from a finder of goods will get a valid title under circumstances.
- Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Question 12

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller. There are, however, certain exceptions to the rule which are stated as under:

- Fitness as to quality or use:**
Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
- Goods purchased under patent or brand name:**
In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
- Goods sold by description:**
Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.
- Goods of Merchantable Quality:**
Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable.
- Sale by sample:**

Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.

1. Goods by sample as well as description:

Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition.

2. Trade Usage:

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.

3. Seller actively conceals a defect or is guilty of fraud:

Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case, the buyer has a right to avoid the contract and claim damages.

Question 12

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]:

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

2. Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

3. The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a quantity a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Example: If a person orders motor horns from a manufacturer of horns, and the

horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

4. Condition as to wholesomeness:

In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Question 14

J the owner of a Fiat 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 Rs 50,000. The agent sells the car for Rs 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]

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

- The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- The buyer should act in good faith.
- 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 the given case J was the owner of Fiat Car, which he wants to sell for this he appointed P and mercantile agent putting one condition that price should not be less than Rs.50,000. However, P sells the car for Rs. 40,000 to A who buys the car in good faith without having any knowledge of fraud. P misappropriated the money received from sell of that 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 15

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.
- b) 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 1 *Imp*

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

1. Sale by a Mercantile Agent:

A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely

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

2. Sale by one of the joint owners:

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

3. Sale by a person in possession under voidable contract:

A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract

had not been rescinded until the time of the sale (Section 29).

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 without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]

5. Sale by buyer obtaining possession before the property in the goods has vested in him:

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

6. Sale by an unpaid seller:

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

7. 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.
- c. Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Question 2 *

Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer.

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

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

Facts of Case:

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi.

Conclusion:

Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Question 3

J the owner of a Fiat 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 Rs 50, 000. The agent sells the car for Rs 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

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whether J would succeed.

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. 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 from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
 - 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 the given case J was the owner of Fiat Car, which he wants to sell for this he appointed P and mercantile agent putting one condition that price should not be less than Rs.50, 000. However, p sells the car for Rs. 40, 000 to A who buys the car in good faith without having any knowledge of fraud. P misappropriated the money received from sell of that 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 4 *

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,

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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.

Answer:

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

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- 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.
- b) 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 5 *imp **

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. **Appropriation of goods:** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.
2. The essentials regarding appropriation of unascertained goods are:
 - a) There is a contract for the sale of unascertained or future goods.
 - b) The goods should conform to the description and quality stated in the contract.
 - c) The goods must be in a deliverable state.
 - d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
 - e) The appropriation must be made by
 - i. the seller with the assent of the buyer; or
 - ii. the buyer with the assent of the seller.
 - f) The assent may be express or implied.
 - g) The assent may be given either before or after appropriation.

Question 6

What are the rules related to Acceptance of Delivery of Goods?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Acceptance is deemed to take place when the buyer-
 - a) intimates to the seller that he had accepted the goods; or
 - b) does any act to the goods, which is inconsistent with the ownership of the seller; or
 - c) Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).
2. Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection.
3. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods.

Question 7

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]

1. 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

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to raise money on the security of goods [Section 2(9)].

2. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
 - 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 8 (2019)

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

Referring to the provisions of the Sale of Goods Act, 1930, analyze the above situation and decide who will be held responsible for the above damage. Will your answer be different, if

the dues were not settled in cash and are still pending?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. According to section 44 of the Sales of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.
2. The property in the goods or beneficial right in the goods passes to the buyer at appointment of time depending upon ascertainment, appropriation and delivery of goods
3. Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

Facts of case:

In given question Mr. G sold some goods to Mr. H but payment of the same was not received that day. Goods were packed & lying in godown of Mr. G. agent of Mr. H inspected the goods and later on payment was made in cash. Just after receiving cash, Mr. G asked Mr. H to take away goods so he can store his other goods at such place but Mr. H did not take delivery. Mr. G kept the goods out of the godown in an open place and due to rain some of the goods were damaged.

Conclusion:

1. In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.
2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

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

Question 9 ^{Ans}*

"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
- c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).

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

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

3. Sale by a person in possession under voidable contract:

A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

4. Sale by one who has already sold the goods but continues in possession thereof:

If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]

5. Sale by buyer obtaining possession before the property in the goods has vested in him:

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

6. Effect of Estoppel:

Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

7. Sale by an unpaid seller:

Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original

buyer [Section 54 (3)].

8. Sale under the provisions of other Acts:

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

Question 10 Amb P49 - NEW ICA 2019 SM *

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

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

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

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

- Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
- Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Duty of the buyer according to the doctrine of 'Caveat Emptor':

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

2. Duty of the seller according to the doctrine of "Caveat Emptor":

The following exceptions to the Caveat Emptor are the duties of the seller:

- Fitness as to quality or use
- Goods purchased under patent or brand name
- Goods sold by description
- Goods of Merchantable Quality
- Sale by sample
- Goods by sample as well as description
- Trade usage
- Seller actively conceals a defect or is guilty of fraud

Conclusion:

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

Question 11

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

BY CA INDRESH GANDHI

Answer: -

Provision: [The Sale of Goods Act, 1930]

- 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.
- 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.
- 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"
- The rule of caveat emptor does not apply in the following cases:
 - Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes known 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. (Section 16(1)).
 - 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 the manufacturer or producer 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)).
 - Usage of trade: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).
 - 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 12

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty.
2. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
3. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
4. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. **Facts of Case:** In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car. **Answer:** Ram is therefore entitled to reject the car and have refund of the price.

Question 13

Describe the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or

become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

2. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
3. In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
4. It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

UNIT 4: Unpaid Seller

Question 1

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.
6. Right of lien and Right to stoppage the goods in transit- Distinction:
 - a) The essence of a right of lien is to retain possession whereas the right of

- that he has obtained a decree to the price of the goods.
1. Right of lien and Right to stoppage the goods in transit- Distinction:
 - a) 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 2

Describe the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-
 - a) The whole of the price has not been paid or tendered.
 - b) A bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonored.
2. Right of stoppage of goods in transit: When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.
3. However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
 - a) The seller must be unpaid.
 - b) The seller must have parted with the possession of goods.
 - c) The goods must be in the course of transit.
- 4.

- d) The buyer must have become insolvent.
- e) The right is subject to provisions of the Act.

Question 3

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

Question 4

price of the goods from the date on which payment becomes due, interest on the price when it becomes due from such day as he may notify

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-
 - a) a lien on the goods for the price while he is in possession of them;
 - b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
 - c) a right of re-sale as limited by this Act. [Sub-section (1)]
2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]
3. These rights can be exercised by the unpaid seller in the following circumstances:
 - a) Right of lien (Section 47):
According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely: -
 - i. where the goods have been sold without any stipulation as to credit;
 - ii. where the goods have been sold on credit, but the term of credit has expired;
 - iii. where the buyer becomes insolvent.
 - b) Right of stoppage in transit (Section 50):
When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in transit, and may retain them until paid or tendered price of the goods.

c) Right to re-sell the goods (Section 54):

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

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

Question 5

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

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

- a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- b) sue the seller for damages for breach of warranty.

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

2. Suit for interest:

Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

Question 6

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

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

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

Facts of Case:

In given case Suraj sold his car to Sohan for 75,000. Sohan paid 25,000 and took possession of the car and promised to pay the remaining amount within month but later on Sohan refuses to give remaining amount on the ground that car is not in good condition.

Conclusion:

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

- Interest on the remaining amount
- Interest during the pendency of the suit.

Question 7

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Position of Mr. D:

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

2. 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:

- 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.

- Suit for damages for non-acceptance (Section 56):

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

- Suit for interest [Section 61]:

If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Question 8

Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer.

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

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

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

Facts of Case:

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the goods which is equivalent to accepting the goods e.g., he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi.

Conclusion:

Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Question 9

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

Answer: -

Provision: [The Sale of Goods Act, 1930]

1. Appropriation of goods: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.
2. The essentials regarding appropriation of unascertained goods are:
 - a) There is a contract for the sale of unascertained or future goods.
 - b) The goods should conform to the description and quality stated in the contract.
 - c) The goods must be in a deliverable state.
 - d) The goods must be unconditionally (as distinguished from an intention to

- appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- e) The appropriation must be made by
- i. the seller with the assent of the buyer; or
 - ii. the buyer with the assent of the seller.
- f) The assent may be express or implied.
- g) The assent may be given either before or after appropriation.

Q) Define unascertained and unascertained goods. (Nov 2019)

Q) Auction sale (Sec 64)

provision: The Sale of Goods Act 1930.
An Auction sale is a mode of selling property by inviting bids publicly, and the sold property to the highest bidder. An auctioneer is an agent governed by law of agency.

[Legal rule of auction sale: - Sec 64] So the 1930 provide following rules to regulate sale by auction.

- a) where goods are sold in lots.
- b) completion of the contract or sale.
- c) Right to bid may be reserved.
- d) where sale is not notified by seller.
- e) Reserved price
- f) Pre-tended binding - price.

CH. 3: THE INDIAN PARTNERSHIP ACT, 1932
 UNIT 1: General Nature of a Partnership

Question 1

What is Partnership Deed? What are the particulars that partnership deed contains? (Nov18 RTP)

Answer: -

Provision:

1. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes.
2. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
3. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises immovable property, the instrument of partner's hip must be in writing, stamped and registered under the Registration Act.
4. Partnership deed may contain the following information:
 - a) Name of the partnership firm.
 - b) Names of all the partners.
 - c) Nature and place of the business of the firm.
 - d) Date of commencement of partnership.
 - e) Duration of the partnership firm.
 - f) Capital contribution of each partner.
 - g) Profit Sharing ratio of the partners.
 - h) Admission and Retirement of a partner.
 - i) Rates of interest on Capital, Drawings and loans.
 - j) Provisions for settlement of accounts in the case of dissolution of the firm.
 - k) Provisions for Salaries or commissions, payable to the partners, if any.
 - l) Provisions for expulsion of a partner in case of gross breach of duty or fraud.

INDIAN PARTNERSHIP ACT, 1932

Question 2

What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

Answer: -

Provision:

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.
4. Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:
 - a) Parties have not retained any record of terms and conditions of partnership.
 - b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
 - c) No account of the partnership was opened with any bank
 - d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

Question 3

What is the true test of partnership?

Answer: -

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

1. 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.

2. For determining the existence of partnership, it must be proved.

- There was an agreement between all the persons concerned
- The agreement was to share the profits of a business and
- The business was carried on by all or any of them acting for all.

3. Agreement: Oral or written agreement / Registration not compulsory
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

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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 4

Three brothers, X (age 19 years), Y (age 18 years), Z (age 17 years), decide to form a partnership with a provision that Z will share the profit only. Can they do so?

Answer: -

Provision: [Indian Partnership Act, 1932]

- As per the provisions of the Indian Partnership Act, 1932, a partnership can be formed if all the partners are competent to contract.
- A minor cannot become a partner in the partnership firm. But, after the formation of partnership, the minor can be admitted into partnership, but with the consent of all the partners, for benefits only.
- A minor is incompetent to do the contract and such contract is void-ab-initio. Therefore, a minor cannot be admitted in the business of the partnership firm because the partnership is formed on a contract.
- Though a minor cannot be a partner in a firm, he can nevertheless be admitted to the benefits of partnership under section 30 of the Indian Partnership Act, 1932. He may be validly have a share in the profit of the firm but this can be done with the consent of all the partners of the firm.

Facts of case:

Three brothers, X (age 19 years), Y (age 18 years), Z (age 17 years), decide to form a partnership with a provision that Z will share the profit only.

Answer:

Here, Z is not competent to contract because he is a minor. Hence, a partnership cannot be formed with a minor as a partner but after the formation of partnership, a minor can be admitted to the benefit of the firm with the consent of all other partners.

Question 5

X, Y and Z agreed to share the profits of a business carried on by all or any of them acting for all. The management and control were entrusted in X with power to restrict the rights of Y and Z. Is there a valid partnership?

Provision: [Indian Partnership Act, 1932]

- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- Each partner carrying on business is the principal as well as agent of other partners. He is an agent in so far as he can bind other partners by his acts and he is the principal to the extent that he is bound by the act of other partners.

Facts of case:

X, Y and Z agreed to share the profits of a business carried on by all or any of them acting for all. The management and control were entrusted in X with power to restrict the rights of Y and Z.

Answer:

Here, the partnership between X, Y and Z is valid because all the essential elements of partnership exist under the partnership agreement.

Question 6

Can X and Y be regarded as partners in the following cases?

- X and Y who jointly own a house, let it out on rent of Rs. 10,000 p.a. and share the rental income equally.
- X and Y who jointly own a house, converted the house into a hotel after investing Rs. 1,00,000 each. X manages the hotel and meets all expenses and retains half of gross earnings and hands over the other half to Y.
- X and Y who jointly own a house, converted the house into a hotel after investing Rs. 1,00,000 each. It was agreed that X would manage the hotel on his own and on behalf of Y and the net earnings would be divided equally.
- X, a publisher agrees to publish at his own expense, a book written by Y and to pay Y half of the net profits.

BY CA INDRESH GANDHI

- X admits Y as a partner. Y does not bring any capital. He is not liable for any loss and is to receive Rs. 1,000 p.m. as salary in lieu of profits and have all the powers of a partner.

Answer: -

- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Here, X and Y are merely co-owners who are sharing the gross returns arising from a joint property.
- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Here, X manages the hotel on his own and also bears all expenses on his own. X and Y are merely co-owners who are sharing the gross returns arising from a joint property.
- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Here, X and Y are in partnership as both have agreed that X would manage the hotel on his own and on behalf of Y and the net earnings would be divided equally. All the essential elements of partnership exist between X and Y.
- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Here, X and Y are not partners because sharing of profit, which is prima facie evidence, exists but mutual agency among X and Y, which is conclusive evidence, does not exist.
- As per the provisions of the Indian Partnership Act, 1932, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Here, X and Y are partners as X has admitted Y as a partner and also Y has all powers of a partner. Bringing capital or bearing losses are not essential elements of a partnership. X and Y have mutual agency between them.

Question 7

Explain the following kinds of partnership under the Indian Partnership Act, 1932:

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credit. After expiry of credit period, Z did not get amount of TV sets sold to the partnership firm. X and A for the recovery of price. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.

Answer: -

Provision: [Section 28 of Indian Partnership Act, 1932]

1. Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.
2. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of holding out.
3. You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.
4. The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Facts of case:

In the given case X & Y are partners in a partnership firm. X introduced A, a manager as a partner to Z who is a trader. A remained silent on this. Z believing on some supplied 100 TV sets to A on credit. Z did not get the amount after the expiry of the time period from the firm and he filed a suit against X and A for recovery of price.

Conclusion:

In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:

- a) no fixed period has been agreed upon for the duration of the partnership;
- b) there is no provision made as to the determination of the partnership.

Provision: [Indian Partnership Act, 1932]

Answer: -

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

These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will.

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

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

(ii) Particular partnership:

A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called particular partnership.

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

Question 9

X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 TV sets to the firm on

Question 10

Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm. Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932

Answer: -

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

1. 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.

2. 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 not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

4. Sharing of Profit:

Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

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 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 11

INDIAN PARTNERSHIP ACT, 1932

Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932 (a) Whether Bohan is liable for the dues of Karan against the firm. (b) In case, Karan has filed the suit against the firm, whether Bohan would be liable?

Answer: -

Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not, he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm. In the instant case, Bohan was admitted as nominal partner in the firm.

A creditor of the firm, Karan has claimed his dues from Bohan as he is the partner in the firm. Bohan has denied for the claim by replying that he is merely a nominal partner.

(a) Bohan is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.

(b) In case, Karan has filed the suit against firm, answer would remain same.

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 to interfere with the conduct of the business.
- i) to require accounts, or
- ii) 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:
 - (i) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - (ii) 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 3

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

Or

Question 1

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. (Nov18 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.

Conclusion:

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

Question 2

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?

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

Answer: -

Provision:

1. A minor is incompetent to do the contract and such contract is void-ab-initio. Therefore, a minor cannot be admitted in the business of the partnership firm because the partnership is formed on a contract.
2. Though a minor cannot be a partner in a firm, he can nevertheless be admitted to the benefits of partnership under section 30 of the Indian Partnership Act, 1932. He may be validly having a share in the profit of the firm but this can be done with the consent of all the partners of the firm.

3. Rights of the minor in the firm:

- a) A minor has a right to his agreed share of the profits and of the firm.
- b) He can have access to, inspect and copy the accounts of the firm.
- c) He can sue the partners for accounts or for payments of his share but only, when severing his connection with the firm and not otherwise. The amount of share shall be determined by a valuation made in accordance with the rules upon a dissolution.
- d) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Question 4

A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

Whether the Firm's contention shall be tenable?
 i) What would be your answer if a part of the stationery so purchased by A was delivered to the firm by him, and the rest of the stationery was used by him for private use, about which neither the firm nor the supplier D was aware?
Answer: -

Provision:

1. The problem in the question is based on the Implied Authority of a partner provided in Section 19 of the Indian Partnership Act, 1932.
2. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred on by section is called his Implied Authority (Sub-Section (1) of section 19).
3. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

Conclusion:

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

- i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- ii) In the second case also, the answer would be the same as above, i.e., the implied authority of the partner binds the firm.
- iii) In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

Question 5

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their

personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

Answer: -

Provision:

1. A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
 - 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.
2. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.
3. The test of good faith as required under Section 33(1) includes three things:
 - a) The expulsion must be in the interest of the partnership.
 - b) The partner to be expelled is served with a notice.
 - c) He is given an opportunity of being heard.
4. If a partner is otherwise expelled, the expulsion is null and void.

Facts of case:

X, Y & Z were partners in a partnership firm carrying their business successfully. Due to some personal issue spouses of X & Y fought in a club in which X's wife was hurt badly. X got angry on this incident and convinced Z to expel Y from partnership. Further Y was expelled from partnership firm without any notice.

Conclusion:

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

Question 6

What do you mean by "implied authority" of the partners in a firm?

Provision: [Section 19 of Indian Partnership Act, 1932]

1. Subject to the provisions of section 22, the act of a partner which is done in the usual way, business of the kind carried on by the firm, binds the firm.
2. The authority of a partner to bind the firm conferred by this section is called his "implied authority".
3. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
 - a) Submit a dispute relating to the business of the firm to arbitration
 - b) open a banking account on behalf of the firm in his own name
 - c) compromise or relinquish any claim or portion of a claim by the firm
 - d) withdraw a suit or proceedings filed on behalf of the firm
 - e) admit any liability in a suit or proceedings against the firm
 - f) acquire immovable property on behalf of the firm
 - g) transfer immovable property belonging to the firm; and
 - h) enter into partnership on behalf of
4. **Mode Of Doing Act To Bind Firm (Section 22):**
In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Question 7

X and Y are in partnership. X was appointed to buy goods for the firm. Is X accountable to firm for profit he makes in the following cases?

- a) X without the knowledge of Y, supplied his own goods to the firm at market price and made a huge gain.
- b) X without the knowledge of Y, obtains for his own sole benefit a lease of the building in which the partnership business is carried on.
- c) X without the knowledge of Y, received commission from Z, a supplier of goods to the firm.
- d) It is found out that X is engaged with Z in the supplying goods to the customers of firm.

Answer:

- a) As per the provisions of the Indian Partnership Act, 1932, the partners must not

make 'secret profits'. Here, X, without the knowledge of Y, supplied his own goods to the firm and made huge gain. The gains made by X shall be claimed by the firm

- As per the provisions of the Indian Partnership Act, 1932, the profits gain by any partner from the use of the firm's property, the profits shall be claimed by the firm. Here, X obtains the sole benefit by leasing the building belonging to the firm. The benefits so obtained by X, shall be claimed by the firm.
- As per the provisions of the Indian Partnership Act, 1932, any profit gained by the partner from a transaction of the firm, shall be claimed by the firm. Here, X, without the knowledge of Y, receives commission from Z, a supplier of firm. The commission received shall be claimed by the firm.
- As per the provisions of the Indian Partnership Act, 1932, partner shall not compete with the firm without the consent of the other partners. Any profits made by such unauthorized competition can be claimed by the firm. Here, X is engaged with Z in supplying goods to the customers of the firm. Profits gained by X shall be claimed by the firm.

Question 8

X paid Y and Z a premium of Rs. 20 lacs on entering into partnership for 10 years and the firm is dissolved at the end of 8 years. State whether X is entitled to repayment of proportionate premium in each of the following alternative cases:

- If the dissolution is by the death of Y.
- If the dissolution is due to X's own misconduct.
- If the dissolution is in pursuance to an agreement which contains no provision for the return of the premium.
- If the dissolution is due to Y's misconduct.
- If the dissolution is due to the insolvency of Y.

Answer: -

- As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case of death of one of the partners, the partner shall not be entitled for the premium. Here, the firm is dissolved due to the death of Y, so X shall not get the premium of the

left-out period.

- As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case, the firm is dissolved due to the misconduct of the partner paying the premium, then such partner shall not be entitled to get the premium. Here, the firm is dissolved due to X's own misconduct. So, X shall not be entitled for the return of the premium.
- As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. But, in case, there is an agreement that contains to get the premium. Here, the agreement contains no provision regarding the return of the premium after dissolution. So, X shall not be entitled for the return of the premium.
- As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. Here, X shall be entitled for the return of the premium as the dissolution of firm has happened due to Y's misconduct. X shall get the premium for the rest of 2 years i.e., $2 \times 2 = 4$ Lacs.
- As per the provisions of the Indian Partnership Act, 1932, if the partnership is dissolved before a fixed time period, then the partner paying the premium is entitled to the return of the premium for the left-out period. Here, X shall be entitled for the return of the premium as the firm is dissolved due to the insolvency of Y. X shall get the premium for the rest of 2 years i.e., $2 \times 2 = 4$ Lacs.

Question 9

State with reason whether the following agreements are valid or void:

- An agreement among the partners that no partner shall not carry on any business other than that of the firm while he is a partner.
- An agreement with an outgoing partner that he will not carry on any business similar to that of the firm in the same locality for the next 3 years.
- An agreement among the partners upon the dissolution of the firm that some or all of them will not carry on a business similar to that of the firm in the same locality for the next 3 years.
- An agreement by a partner with the buyer of goodwill of the firm that he will not carry on any business similar to that of the firm in the same locality for the next 3 years.
- An agreement by a partner with the buyer of goodwill of the firm that he will not carry

carry on any business similar to that of the firm in the same locality for the next 3 years.

Answer: -

- a) As per the provisions of the Indian Partnership Act, 1932, the contract between the partners may be express or implied by consistent course of act. The contract between the partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner. Here, the above agreement between the partners is valid.
- b) As per the provisions of the Indian Partnership Act, 1932, every outgoing partner has the right to carry on competitive business under certain conditions. Here, the agreement with the outgoing partner, that he will not carry on any business similar to that of the firm in the same locality for the next 3 years, is valid.
- c) As per the provisions of the Indian Partnership Act, 1932, the contract between the partners may be express or implied by consistent course of act. The contract between the partners may provide that the partners shall not carry on any business other than that of the firm after dissolution under certain conditions. Here, the above agreement between the partners is valid.
- d) As per the provisions of the Indian Partnership Act, 1932, if goodwill of the firm is sold after dissolution, then existing partners cannot continue the business unless:
 - i. Agreement of sale of goodwill provides for something else, or
 - ii. Goodwill has been purchased by any of the existing partner.

Here, the agreement by a partner with the buyer of goodwill of the firm, that he will not carry on any business similar to that of the firm in the same locality for the next 3 years, is valid.

Question 10

"Partner indeed virtually embraces the character of both a principal and an agent". Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932.

Answer: -

Provision: [Indian Partnership Act, 1932]

1. Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.
2. A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.
3. Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent.
4. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.
5. The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

Question 11

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.

- a) 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 12

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

Explain with reasons:

- a) Whether Ram's private estate is liable for the price of the machine purchased By the firm?
b) Against whom can the creditor obtain a decree for the recovery of the price?

Answer: -

Provision: [Indian Partnership Act, 1932]

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

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

- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased.
(ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was not debt due in respect of the goods in Ram's life time.

Question 13

State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:

Retirement of a partner

Insolvency of a partner

Answer: -

Provision: [Indian Partnership Act, 1932]

RETIREMENT OF A PARTNER (SECTION 32):

- A partner may retire:
 - with the consent of all the other partners;
 - in accordance with an express agreement by the partners; or
 - where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.
- Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them

which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

4. Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
5. Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

INSOLVENCY OF A PARTNER (SECTION 34)

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
5. Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Question 14

Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.

In the light of the Indian Partnership Act, 1932, explain:

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X?

Answer:

Provision: [Indian Partnership Act, 1932]

1. As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
2. However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
3. If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:
 - a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
 - b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

Conclusion:

1. In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
2. In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Question 15

When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

Answer: -

Provision: [Section 38 of Indian Partnership Act, 1932]

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such

change may occur by the death, or retirement of a partner, or by introduction of a new partner.

Question 16

What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

Answer: -

Provision: [Indian Partnership Act, 1932]

1. The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.
2. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Question 17

With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner.

Answer: -

Provision: [Section 34 of Indian Partnership Act, 1932]

Effects of insolvency of a partner are as follow:

1. The insolvent partner cannot be continued as a partner.
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
4. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
5. Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Question 18

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

1. Examine whether action by the partners was justified or not?
2. What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

Answer: -

Provision: [Section 33 of Indian Partnership Act, 1932]

1. A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
 - 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.
2. If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.
3. The test of good faith as required under Section 33(1) includes three things:
 - a) The expulsion must be in the interest of the partnership.
 - b) The partner to be expelled is served with a notice.
 - c) He is given an opportunity of being heard.
4. If a partner is otherwise expelled, the expulsion is null and void.

Facts of case:

In given question M/s XYZ & Associates is a partnership firm in which X, Y & Z are senior partners. They are engaged in the business of carpet manufacturing and exporting it to foreign countries. They appointed Mr. G an expert in the field of carpet business as their partner. Afterwards Mr. G was blamed for conducting unauthorized activities and was expelled from partnership.

Question 19

Sohan, Rohan and Jay were partners in a firm. The firm is dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2018, one of the partners, Mr. Jay died in a road accident. The firm has ordered M/s AB and Co. to supply the furniture for their business on 25 May 2018, when Jay was also alive. Now Sohan and Rohan continue the business in the firm's name after Jay's death. The firm did not give any notice about Jay's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25 July 2018. The fact about Jay's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Jay's private estate is also liable for the price of furniture purchased by the firm?

Answer:

1. According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.
2. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.
3. In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Jay's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Jay's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35).
4. So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Question 20

Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as a 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 21

A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹ 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹ 200 per Kg. He supplied iron bars to the firm without the firm realising

the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of ₹ 350? Assume there is no contract between the partners regarding the above.

Answer: -

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

- if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

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

Question 22

Mr. A (transferor) transfers his share in a partnership firm to Mr. B (transferee). Mr. B felt that the book of accounts was displaying only a small amount as profit in spite of a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners were of the opinion that Mr. B cannot challenge the books of accounts. As an advisor, help them solve the issue applying the necessary provisions from the Indian Partnership Act, 1932.

Answer: -

As per Section 29 of the Indian Partnership Act, 1932, during the continuance of the business, a transferee is not entitled

- To interfere with the conduct of the business
- To require the accounts
- To inspect the books of the firm

He is only entitled to his share of profit. Keeping the above points, in the given case, since the partnership business is in continuance, Mr. B is bound to accept the profits as agreed to by the partners. He cannot challenge the accounts. He is only entitled to receive the share of profits of Mr. A (transferring partner).

Question 23

A, B and C are partners in M/s ABC & Company. The firm has decided to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. The machine was purchased but thereafter A and B became insolvent and the firm was unable to pay for machine. Explain, would the estate of C liable for the dues of M/s LMN & Company?

Answer: -

Liability of Partner in case of death:

- According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. The estate of the deceased partner may be absolved from liability for the future obligations of the firm, with the firm. It is not necessary to give any notice either to the public or the persons having dealings with the firm.
- In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company.
- Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine. On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company.

UNIT 3: Registration & Dissolution of a Firm

Question 1

June 2022

State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932?

Answer: -

Provision:

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- Deadlock in the management.
- Where the partners are not in talking terms between them.
- Loss of substratum.
- Gambling by a partner on a stock exchange.

Question 2

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 as a firm at the time of dissolution and no notice of the partner was given to the Registrar.

- The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,
 - the suit must be instituted by or on behalf of the firm which had been registered
 - the person suing had been shown as partner in the register of firms.

Answer:

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

Question 3 Important

What are the consequences of Non-Registration of a Partnership Firm? Discuss

Or

"Indian Partnership Act does not make the registration of firms compulsory, nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?

Answer: -

Provision:

Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

These disabilities briefly are as follows:

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 4

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

Answer: -

Provision: [Indian Partnership Act, 1932]

- The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm.
- But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.
 - as a result of any agreement between all the partners (i.e., dissolution by agreement)

- b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution)

- c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution)

- d) subject to agreement between the parties, on the happening of certain contingencies, such as:

- effluence of time;
- completion of the venture for which it was entered into;
- death of a partner

- e) insolvency of a partner.

- f) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and by intervention of court in case of:

- a partner becoming the unsound mind
- permanent incapacity of a partner to perform his duties as such
- Misconduct of a partner affecting the business
- wilful or persistent breach of agreement by a partner
- transfer or sale of the whole interest of a partner
- improbability of the business being carried on save at a loss
- The court being satisfied on other equitable grounds that the firm should be dissolved.

Question 5: X, Y and Z are partners in an unregistered firm. Is the suit maintainable in the following cases?

- X filed a suit against the firm for the recovery of his share of profit.
- X filed a suit against Y who had stolen the property of the firm.
- The firm filed a suit against W, a customer for the recovery of the amount due from W.
- The firm filed a suit against W, a customer for the recovery of the amount due from W and immediately after filing the suit, the firm got itself registered.
- The firm filed a suit to restrain the third party from misusing the Patent right of firm.
- W filed a suit against the firm for the recovery of Rs. 10,000 dues from the firm. W also owed Rs. 6,000 to the firm. The firm claimed a set off of Rs. 6,000.
- X filed a suit for the dissolution of the firm.
- X filed a suit for the accounts of a dissolved firm.

Answer: -

- a) As per the provisions of the Indian Partnership Act, 1932, an aggrieved partner of an unregistered firm cannot bring legal action against other persons or the firm. Here, X cannot file a suit against the firm for the recovery of his share of profit because the firm is unregistered.
- b) As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party or other co-partners. But, in this case, X had filed a suit against Y for stealing the property of the firm. X's suit is valid as it is a criminal suit not the civil suit.
- c) As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. Here, the firm cannot recover its amount due from W, a customer of the firm, as the firm, being unregistered, cannot file a suit against third party (W).
- d) As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. Here, the firm file a suit against W for the recovery of amount due from W. The firm filed the suit at the time when it was unregistered. Now, the firm cannot ratify this act by registering itself.
- e) As per the provisions of the Indian Partnership Act, 1932, if a partnership firm is unregistered, there will be no suit in a civil court by firm or other co-partners against third party. But, here, the firm is restricting the third party from misusing its patent right, which is a criminal offence.
- f) As per the provisions of the Indian Partnership Act, 1932, third party can sue the firm even if the firm is unregistered and if the suit is filed against the firm and the claim value is more than Hundred Rupees, then firm cannot set-off. Here, W filed a suit against the firm for the recovery of Rs. 10,000 dues from the firm. W also owed Rs. 6,000 to the firm. W is entitled for the recovery of Rs. 10,000 from the firm. But the firm cannot set-off the claim of Rs. 6,000 because it is more than Rs. 100.
- g) As per the provisions of the Indian Partnership Act, 1932, partners can sue the firm for the dissolution, even if the firm is unregistered. X's suit for the dissolution of the firm is valid.
- h) As per the provisions of the Indian Partnership Act, 1932, partners can sue a dissolved firm for the settlements of accounts, even if the firm is unregistered.

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Here, X's suit is valid because he has sued a dissolved firm for the accounts. As per the provisions of the Indian Partnership Act, 1932, partners have the right to sue a dissolved firm for the realisation of the assets, even if the firm is unregistered. Here, X's claim is valid as the shares are assets of the dissolved firm and X can claim it even if the firm is unregistered.

Question 6

A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution. Discuss the liability of partners for Rs. 20 lacs.

Answer: -

Provision: [Indian Partnership Act, 1932]

1. As per the provisions of the Indian Partnership Act, 1932, a public notice of the dissolution of the firm is not required if:
 - a) the partner is adjudicated as insolvent, or
 - b) a dormant partner retires from the firm, or
 - c) the partner dies.
2. The remaining active partners shall be liable for the acts done after dissolution except the partners mentioned in the above cases.

Facts of case:

A, B, C, D and E are partners in a firm. They decided to dissolve the firm from 1st January but failed to give a public notice of its dissolution and continued the business of the firm even that date. C, a dormant partner retired on 4th Jan, D died on 5th January and E was declared insolvent on 10th January. On 11th January, A borrowed in the firm's name Rs. 20 lacs from R who was ignorant of the dissolution.

Conclusion:

Here, A and B are liable for Rs. 20 Lacs but C, being a dormant partner, D and E are not liable for Rs. 20 lacs because C retires from the firm and dormant partner's retirement as

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insolvent. So, D and E shall also not be liable for any dealings or transactions subsequent to dissolution.

Question 7

P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?

Answer: -

Provision: [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 transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

1. The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,
2. The suit must be instituted by or on behalf of the firm, which had been registered.

Question 8

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

Answer: -

Provision: [Indian Partnership Act, 1932]

1. The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and

accompanied by the prescribed fee, stating-

- a) The firm's name
 - b) The place or principal place of business of the firm,
 - c) The names of any other places where the firm carries on business,
 - d) the date when each partner joined the firm,
 - e) the names in full and permanent addresses of the partners, and
 - f) the duration of the firm.
2. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
 3. Each person signing the statement shall also verify it in the manner prescribed.
 4. A firm name shall not contain any of the following words, namely:-
'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Question 9 *gnd * **

"Dissolution of a firm is different from dissolution of Partnership". Discuss.

Answer: -

Provision: [Indian Partnership Act, 1932]

S.NO.	BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
1.	Continuation of business	It involves discontinuation of business in partnership	It does not affect continuation of business. It involves only reconstitution of the firm.

2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Conclusion:

Therefore, considering the above points we can conclude that Dissolution of a firm is very much different from dissolution of partnership.

Question 10

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]

- Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners.
- In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

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 11

M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price.

State under the provisions of the Indian Partnership Act, 1932:

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

Answer: -

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

But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

(a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.

(b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.

In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

Question 12

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

Answer: -

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

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

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

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

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

Question 13

G, I and S were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can G, I and S continue the partnership or will their partnership firm get dissolved?

Answer: -

Compulsory dissolution of a firm (Section 41)

A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of Section 41 of the Indian Partnership Act, 1932.

CH. 4: THE LIMITED LIABILITY PARTNERSHIP

Question 1

Explain the Meaning of LLP. State its Characteristics of LLP.

Answer: -

Provision: [The LLP Act, 2008]

Meaning of LLP

1. A LLP is a new form of legal business entity with limited liability.
2. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership.
3. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
4. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Essentials of LLP

1. LLP is a body corporate:
LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
2. Perpetual Succession:
LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
3. Separate Legal Entity:
LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
4. Mutual Agency:
Further, no partner is liable on account of the independent or un-authorized actions of other partners. All partners will be the agents of the LLP alone. No one partner

can bind the other partner by his acts.

5. LLP Agreement:

Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial Legal Person:

(A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual.) It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine.

7. Common Seal:

A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one. Thus, it is not mandatory for a LLP to have a common seal.

8. Limited Liability:

Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP.

9. Management of Business:

The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10. Minimum and Maximum number of Partners:

Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.

Question 2

State the essentials required for incorporation of the LLP.

Answer: -

Provision: [The LLP Act, 2008]

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

1. To complete and submit incorporation document in the form prescribed with the Registrar electronically
2. To have at least two partners for incorporation of LLP [Individual or body corporate]
3. To have registered office in India to which all communications will be made and received
4. To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India
5. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA
6. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied
7. LLP Name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company
8. To create a LLP proper formation documents must be led with the registrar along with the necessary filing fees.
9. Steps to Incorporate LLP
 - a) Name Reservation
 - i. The first step to incorporate Limited Liability Partnership is reservation of name of LLP.
 - ii. Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.
 - b) Incorporate LLP
 - After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership
 - e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners
 - c) LLP Agreement
 - i. Execution of LLP Agreement is mandatory as per Section 23 of the Act.
 - ii. LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP

Question 3

Explain the process of Registration of LLP

Answer: -

Provision: [The LLP Act, 2008]

1. Deciding Partners and Designated partners
2. Obtain Designated Partners Identification Number (DPIN) & Digital Signature Certificates (DSC)
3. Apply for reservation of Name by checking the availability of Name (up to 6 Names)
4. Drafting of LLP Agreement*
5. Electronic Filing of some Documents along with requisite fees
6. Issuing Certificate of Incorporation along with LLPIN (LLP Identification Number)

Question 4

State the Contents of LLP Agreement ?

Answer: -

Provision: [The LLP Act, 2008]

Following are the contents of LLP Agreement

1. Name of LLP
2. Name & address of Partners & Designated Partners
3. Form of contribution & interest on contribution
4. Profit sharing ratio
5. Remuneration of Partners
6. Rights & Duties of Partners
7. Proposed Business
8. Rules for governing LLP.

Question 5

What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Answer: - Provision: [Section 17 of the LLP Act, 2008]

1. Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to—

- (a) that of any other limited liability partnership or a company; or
- (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

2. Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement

3. If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter: Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

Question 6

Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008.

Answer: -

Provision: [Section 64 of the LLP Act, 2008]

A LLP may be wound up by the Tribunal:

1. if the LLP decides that LLP be wound up by the Tribunal;
2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
3. if the LLP is unable to pay its debts;
4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
5. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Question 7

Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

Answer: -

Provision: [Section 5 of the LLP Act, 2008]

Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

1. he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
2. he is an undischarged insolvent; or
3. he has applied to be adjudicated as an insolvent and his application is pending

Question 8

What are the effects of registration of LLP?

Answer: -

Provision: [Section 14 of the LLP Act, 2008]

On registration, a LLP shall, by its name, be capable of—

- suing and being sued;
- acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- having a common seal, if it decides to have one; and
- doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Question 9

What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

Answer: -

- Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners. **Explanation:** For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.

- Subject to the provisions of sub-section (1),
 - if the incorporation document

a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner.

c) Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

3. An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

4. Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

5. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

6. Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

Question 10

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership." Explain.

Answer: -

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

1. Limited Liability:

Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

2. Flexibility of a partnership:

The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially

efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 11

What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008?

Answer: -

Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

1. The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.
2. Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.
3. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.
4. The accounts of LLP shall be audited in accordance with such rules as may be prescribed.

Question 12

Explain - Small limited liability partnership.

Answer: -

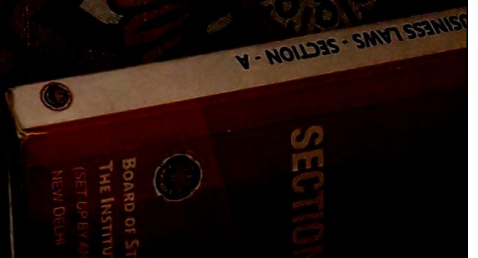
*Small limited liability partnership [Section 2(to)]:
It means a limited liability partnership -

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

Question No. 13

Differentiate between a LLP and a partnership firm?
Answer - Provision: [The LLP Act, 2008]

Basis for Comparison	Limited Liability Partnership	Partnership Firm
Regulating Act	The Limited Liability Partnership Act, 2008	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body corporate.
Separate legal entity	It is a legal entity, separate from its members.	It is a group of persons with no separate legal entity.
Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.



Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Indian Partnership Act, 1932.

Question No. 14

Answer: -

Provision: (The LLP Act, 2008)

Basis for Comparison	Limited Liability Partnership	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability Partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and word "Private limited" as suffix.
Number of members / partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or Body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit Members can be organizations, trusts, another business form or individuals.

Liability of members / partners	Liability of a partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/designated partners	Minimum 2 designated partners	Private Co - 2 directors Public Co - 3 directors

CH. 5: THE COMPANIES ACT, 2013

Question No. 1 *ans*

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

Answer:-

Provision:

1. Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
2. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.
3. Similarities and dissimilarities between the Guarantee Company and the Company having share capital:
 - a) The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.
 - b) However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Conclusion: Above are given some similarities between a Guarantee company and Company having share capital.

Question No. 2

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

Answer:-

1. Yes, a non-profit organization can be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013.
2. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
3. Such company intends to apply its profit in
 - a) promoting its objects
 - b) prohibiting the payment of any dividend to its members.
4. The Central Government has the power to issue license for registering a section 8 company.
 - a) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private Limited' to its name, by issuing licence on such conditions as it deems fit.
 - b) The registrar shall on application register such person or association of persons as a company under this section.
 - c) On registration the company shall enjoy some privileges and obligations as of a limited company.

Question No. 3 *ans*

Briefly explain the doctrine of 'ultra vires' under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?

Answer:-

Provision:

1. The meaning of the term ultra vires is simply 'beyond (their) powers'. The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers.

- This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.
- It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further (Ashbury Railway Company Ltd vs Riche).
 - In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.
 - On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on. x
 - The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection.
 - Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.
- For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie.
- If the ultra vires loan has been utilized in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.
 - An act, which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularized by notifying it subsequently. For instance, if the act is ultra vires the power of the company, directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

Question No. 4. 4/1/17

Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.

Or
Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 1956. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.

ANSWER:-

PROVISION:

- 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 contract one also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.
 - They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.
 - They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.
 - The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:
 - Actual or constructive knowledge of irregularity. The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
- In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained. Likewise, in Morris v. Karssezen, a director could not defend an allotment of shares to him as a participant in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry.

for example: where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry. The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise.

for example: from the fact that an officer is purporting to act in the manner, which is apparently outside the scope of his authority.

Where, for example, as in the case of *Anand Bhanu Lal vs Dinshaw & Co.*, the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney, that the accountant had authority to effect transfer of the company's property.

Similarly, in the case of *Haughton & Co. v. Nothard, Lowe & Willis Ltd.*, where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it. Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

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

The only clear illustration is found in the *Ruben v Great Fingall Consolidated*. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiff contended that whether the signature were genuine or forged was part of the internal management, and therefore, the company should be estopped from denying genuineness of the document.

However, it was held, that the rule has never been extended to cover such a complete forgery.

Question No. 5.

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

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Answer:-

Provision:

1. The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This leads to stability and perpetuity to the company form of business organization.
2. In short, a company is brought into existence by a process of law and perpetuity to the or wound up or brought to an end only by a process of law and can be terminated or death, insolvency or retirement of any or all shareholder(s) or director(s).
3. The provision for transferrability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

Facts of case:

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

Conclusion:

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

Question No. 6 jwmp

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.
 - a) Only one person as member.
2. Rules regarding its membership:

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- b) 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 (person who has stayed in India for a period of not less than 120 days during the immediately preceding one calendar year)
- shall be eligible to incorporate a OPC
 - shall be a nominee for the sole member of a OPC.
- 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 No. 7

Examine the following whether they are correct or incorrect along with reasons:

- A company being an artificial person cannot own property and cannot sue or be sued.
- A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

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

b) Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

Question No. 8

Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.

Answer:-

Provision: [Section 455 of Companies Act, 2013]

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.
- "Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.
- "Significant accounting transaction" means any transaction other than
 - payment of fees by a company to the Registrar
 - payments made by it to fulfill the requirements of this Act
 - allotment of shares to fulfill the requirements of this Act
 - payments for maintenance of its office and records

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Question No. 9

When a company is registered, it is clothed with a legal personality. Explain.

Answer:-

Provision: [The Companies Act, 2013]

1. When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members.
2. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.
 - a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it
 - b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.
3. A company is capable of owning, enjoying and disposing of property in its own name. Although the shareholders contribute the capital and assets, the company becomes the owner of its capital and assets.
4. The shareholders are not the private or joint owners of the company's property.

Question No. 10

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]

1. 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.

Question No. 10

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.

2. 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 is a indoor management aims to protect outsiders against the company.
3. As per the case of the Royal British Bank vs. Turquand (1856) 65 & 8 327, the directors under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that I 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's 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 No. 11.

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]

1. 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 contributed the company. But under certain circumstances the separate entity of the company may be ignored by the

- the courts.
- When that happens the courts ignore the corporate entity of the company and look behind the corporate facade and hold the persons in control of the management of its affairs liable for the acts of the company.
 - Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.
 - 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 behind 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 facade 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 No. 12.

Krishna, Examine with reasons whether the following statement is correct or incorrect:

- A private limited company must have a minimum of two members, while a public limited company must have at least seven members.
- Affixing of Common seal on company's documents is compulsory.

Answer-

Provision: [Companies Act, 2013]

a. Correct:
Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration.

In exactly the same way, 2 or more persons can form a private company.

b. Incorrect:

The common seal is a seal used by a corporation as the symbol of its incorporation. The Companies (Amendment) Act, 2013 has made the common seal optional by omitting the words "and a common seal" from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Question No. 13.

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 SAB Pvt. Ltd. are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Pvt. Ltd. JVN Pvt. Ltd. and SAB 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]

- Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
- 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:
 - When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
 - 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
- 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 No. 14.

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.
2. 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.

3. The right to enter into contracts, sue or get sued arise 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 on 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 No. 15.

The X Limited was registered as a public company. There are 215 members in the company as noted below:

- a) Directors and their relatives - 190
- b) Employees - 10
- c) Ex-employees (shares were allotted when they were employees) - 5
- d) 5 couples holding shares jointly in the name of husband and wife (5:1) - 5
- e) Others - 5

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

Answer: -

Provision: (Companies Act, 2013)

private company" means company having a minimum paid-up share capital, which by its articles—

1. restricts the right to transfer its shares;
2. except in case of One Person Company, limits the number of its members to two hundred;
3. 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;
4. 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
5. prohibits any invitation to the public to subscribe for any securities of the company.

Fact of case:

1. X Limited was registered as a public company. There are 215 members in the company as noted below:

- a) Directors and their relatives - 190
 - b) Employees - 10
 - c) Ex-employees (shares were allotted when they were employees) - 5
 - d) 5 couples holding shares jointly in the name of husband and wife (5x1) - 5
 - e) Others - 5
2. The Board of Directors of the company propose to convert it into a private company.

Conclusion:

Here, the Board of Directors of the company can convert it into a private company because there are maximum 200 members in the firm.

- a) Directors and their relatives - 190
 - b) 5 couples holding shares jointly in the name of husband and wife (5x1) - 5
 - c) Others - 5
- Total Members = 190 + 5 + 5 = 200 members

So, company do not need any reduction of members as the maximum limit of 200 is not breached by the company as the employees and ex-employees are excluded from the counting of 200 members.

Question No. 16.

company was incorporated on 6th October. The certificate of incorporation of the company was issued by the Registrar on 15th October. The company on 10th October entered into a contract which created its contractual liability. The company entered into prior to issuing of certificate of incorporation. Decide, under the provisions of The Companies Act, 2013, whether the companies can be exempted from the said contractual liability.

Answer: -

Provision: (Companies Act, 2013)

Right from the date of Incorporation as mentioned in the certificate of incorporation the company will have the status of body corporate and that:

- a) All the subscribers and other persons whose names are mentioned in memorandum will become members and directors as the case may be.
- b) Also, company will have following:
 - i. Common Seal,
 - ii. Perpetual Succession,
 - iii. Sale or purchase of movable or immovable property or Tangible and intangible Assets in the name of the company,
 - iv. Also will have right to sue and be sued as company.

Fact of case:

A company was incorporated on 6th October. The certificate of incorporation of the company was issued by the Registrar on 15th October. The company on 10th October entered into a contract which created its contractual liability. The company entered into prior to issuing of certificate of incorporation

Conclusion:

Here, the date of incorporation of the company is 6th October since the date specified in the certificate of incorporation shall be taken as the date of incorporation of the company even though the certificate of incorporation was issued at a later date. Hence, the company is bound by the contracts entered into after date of incorporation.

Question No. 17

A on the instruction of promoters of a company, prepared Memorandum of Association and Articles of Association, paid the registration fees and got the company incorporated. A claim his costs and charges from the company. The company refuses to pay. Will A succeed?

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.
2. As per the provisions of the Companies Act, 2013, all the expenses incurred while incorporating a company, after incorporation, the company shall not be liable for those expenses. Promoters are held personally liable for such expenses.

Fact of case:

A, on the instruction of promoters of a company, prepared Memorandum of Association and Articles of Association, paid the registration fees and got the company incorporated. A claim his costs and charges from the company. The company refuses to pay.

Conclusion:

Here, A cannot recover the amount from the company as at the time of incorporation, the company was not in existence. Company will be liable for the expenses incurred after its incorporation. The expenses incurred before the incorporation are all borne by the promoters. So, A cannot claim his costs from the company but can claim from the promoters.

Question No. 18.

The Memorandum and Articles of Association of a company were delivered to the Registrar of Companies for registration on January 6. On 8th January, the Registrar issued the certificate of incorporation but dates it January 6th. On that very day (January 6th) the company made allotment of its shares. The allotment was challenged that it was made before the actual issue of the certificate of incorporation. How would you decide and why?

Answer:-

Provision: [Companies Act, 2013]

As per the provisions of the Companies Act, 2013, from the date of incorporation (mentioned in the certificate of incorporation), such registered company shall be capable of exercising all the functions of an incorporated company under this Act and having power to enter into contracts related to property of other matters.

Fact of case:

The Memorandum and Articles of Association of a company were delivered to the Registrar of Companies for registration on January 6. On 8th January, the Registrar issued the certificate of incorporation but dates it January 6th. On that very day (January 6th) the company made allotment of its shares. The allotment was challenged that it was made before the actual issue of the certificate of incorporation.

Conclusion:

Here, the date of incorporation of the company is 6th October since the date specified in the certificate of incorporation shall be taken as the date of incorporation of the company even though the certificate of incorporation was issued at a later date. So, the allotment of shares made by the company is valid.

Question No. 19.

A company was formed on the basis of a certificate of incorporation obtained by threatening the Registrar of Companies. Is the company legally formed?

Answer:-

Provision: [Companies Act, 2013]

Certificate of Incorporation is a conclusive evidence nothing can invalidate the Certificate of Incorporation. Even illegal object or forged subscribers will only invalidate the object & memorandum but that will not affect the valid incorporation of company.

Conclusion:

Here, the certificate of incorporation was obtained by threatening the Registrar of Companies. Since, no one can challenge the certificate of incorporation because it is a conclusive evidence, one cannot say that the company is illegally formed. The certificate of incorporation means that all the legal formalities while incorporating the company are duly complied.

Question No. 20.

Four of the seven signatures to the Memorandum of Association of a company are forged. The memorandum is duly presented, registered and a certificate of incorporation is issued. Can the existence of the company be subsequently questioned on the ground that registration is void? Decide.

Answer:-

Provision: [Companies Act, 2013]

1. Certificate of Incorporation is a conclusive evidence nothing can invalidate the Certificate of Incorporation. Even illegal object or Forged Subscribers will only invalidate the object & memorandum but that will not affect the valid incorporation of company.
2. The Companies Act, 2013 states that subject to the provisions of the Act, the Memorandum and Articles shall, when registered, bind the company and the members thereof, to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.

Fact of case:

Four of the seven signatures to the Memorandum of Association of a company are forged. The memorandum is duly presented, registered and a certificate of incorporation is issued.

Conclusion:

The company's existence cannot be challenged now on the ground that registration was void since, the certificate of incorporation, once issued, is the conclusive evidence of the fact that the company has been duly registered. Once the certificate is issued, no one can question the validity of that certificate.

Question No. 21.

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. Referring to the provisions of the Companies Act, 1956 examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

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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 notified 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.

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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 attainment of object clause.

Question No. 22.

A company registered under section 8 of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2018 due to some favorable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

Answer:-Provision: [Companies Act, 2013]

- Under the Companies Act 2013 Section 8 companies are prohibited to distribute dividends to its shareholders. It can pay interest but cannot pay dividend.
- A company is registered with the object of promotion of commerce, science, art, sports, education, research, social welfare, or any other related object. They can use their profit for this given purposes.

Fact of case:

In given case company was registered under section 8 company, it earned huge profit during this financial year. Considering the development some of the members of company demanded dividend from company.

Conclusion:

The company in question is a section 8 company and hence it cannot declare dividend. Thus, the contention of members is incorrect.

Question No. 23.

There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate.

Or
some of the creditors of Pharmaceutical Appliances Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context, they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.

Answer:-Provision: [Companies Act, 2013]

Meaning of Lifting the Corporate Veil:

- The company has a separate legal entity from its members. This principle is called the 'Veil of Incorporation'.
- All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
- This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the company, only if he is acting for the benefit of the company & its members in legitimate manner.
- Therefore, where there is fraudulent intention to misuse the veil for benefits of their own or conducting illegal act, such person will not get benefit of acting behind veil. In such case the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.
- The circumstances or the cases in which the Courts have disregarded the corporate personality of the company are:
 - Protection of revenue: (To prevent evasion of taxation) The Courts may ignore the corporate entity of a company where it is used for tax evasion. (*Juglal v. Commissioner of Income Tax, B.F. Guzdar v. Commissioner of Income Tax Bombay*).

- b) **Prevention of fraud or improper conduct:** The legal personality of a company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. Professor Gower has rightly observed in this regard that the veil of a corporate body will be lifted where the corporate personality is being blatantly used as a cloak for fraud or improper conduct. Thus where a company was incorporated as a device to conceal the identity of the perpetrator of the fraud, the Court disregarded the corporate personality (*Jones v. Lipman*) (*Gifford Motor Co. v. Home*).
- c) **Determination of character of a company, whether it is enemy:** A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company and declare the company to be an enemy company. (*Damleer Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.*)
- d) **Where the company is a sham:** The Courts also lift the veil or disregard the corporate personality of a company where a company is a mere cloak or sham (hoax). (*Gifford Motor Co. Ltd. v. Home*).
- e) **Company avoiding legal obligation:** Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.
- f) **Company acting as agent of trustee of the shareholders:** Where a company is acting as agent for its shareholders, the shareholders will be liable for the acts of the company (*F. G. Films Ltd. In re*).
- g) **Avoidance of welfare legislation:** Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. (*Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.*)
- h) **Protecting public policy:** The Courts invariably lift the corporate veil or a disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy. (*Cannon v. Cannon Ltd.*)
- i) **In quasi-criminal cases:** The courts pierce the corporate veil in quasi-criminal cases in order to look behind the legal person and punish the real persons who have violated the law.
- Conclusion:**
Therefore, Promotor can be made liable when they do any misconduct behind the veil of company.

Question No. 24

Examine the following whether they are correct or incorrect along with reasons:

- a) A company being an artificial person cannot own property and cannot sue or be sued.
b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Answer - [Companies Act, 2013]

ANSWER:-

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

- b) **CORRECT:**
Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

Question No. 25.

Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about ₹2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so?

ANSWER:-

PROVISION: [Companies Act, 2013]

1. As per Rule 3 of the Companies (Incorporation) Rules, 2014, no One Person Company (OPC) can convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

1. Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Conclusion:

In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March, 2019 was Rs. 2.25 Crores. Even though two years have not expired from the date of its incorporation, since its average annual turnover during the period starting from 16th April, 2018 to 31st March, 2019 has exceeded Rs. 2 Crores, Mr. Anil can convert the OPC into a private limited company along with Sunil.

Question No. 26.

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

Answer:-

Provision: [Companies Act, 2013]

1. The House of Lords in *Solomon 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.
2. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company.
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. In *Dinshaw Maneckjee Petit case*, it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest.

This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

Facts of case:

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

Conclusion:

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

Question No. 27

The Memorandum of Association is a charter of a company. Discuss. Also explain in brief the contents of Memorandum of Association.

Answer:-

Provision: [Companies Act 2013]

1. The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.
2. Object of registering a memorandum of association:
 - a) It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
 - b) It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
 - c) A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
 - d) The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
3. A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure.

imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power conferred on it by the memorandum. If it does so, it would be ultra vires the company and void.

4. Contents of the memorandum: The memorandum of a company shall state—
- the name of the company (Name Clause) with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.
 - the State in which the registered office of the company (Registered Office clause) is to be situated;
 - the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause);
 - the liability of members of the company (Liability clause), whether limited or unlimited
 - The amount of authorized capital (Capital Clause) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
 - The desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

Question No. 28.

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

Answer:-

Provision: [Companies Act, 2013]

- According to the 'doctrine of indoor management' the outsiders, dealing with the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.
- They are bound to examine the registered documents of the company, and ensure that the proposed dealing is not inconsistent therewith but they are not bound to do more.
- They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Fact of case:

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave a receipt of the same to Mr. X. Thus, it will be right on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company.

Conclusion:

Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.

Question No. 29.

State the limitations of the doctrine of indoor management under the Companies Act, 2013.

Answer:-

Provision: [Companies Act, 2013]

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

a) **Actual or constructive knowledge of irregularity:**

The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity. In *Howard vs Patent Ivory Manufacturing Co.* where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in *Morris v Kanssen*, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

b) **Suspicion of Irregularity:**

The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in the manner, which is apparently outside the scope of his authority. Where, for example, as in the case of *Anand Bhanji Lal vs Dinshaw & Co.* the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

c) **Forgery:**

The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity. Forgery may in circumstances exclude the Turquand Rule. The only clear illustration is found in the *Ruben v Great Fingall Consolidated*. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. However, it was held, that the rule has never been extended to cover such a complete forgery.

Question No. 30

Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached *Easy Finance Ltd.*, a non-banking finance company for a loan of ₹25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, *Sound Syndicate Ltd.*

The Lender agreed and provided the above said loan. Later on, *Sound Syndicate Ltd.* refused to repay the money borrowed on the pretext that no resolution authorizing such loan had been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analysing the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of *Sound Syndicate Ltd.* is correct or not?

Answer:-

Provision: [Companies Act, 2013]

1. 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.
2. 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. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
5. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Facts of case:

In given question, *Sound Syndicate Ltd.*, a public company, borrows ₹25,00,000 from *Easy Finance Ltd.*, a non-banking finance company, later on they refused to pay back the loan amount by giving reason that no such resolution has been passed for such borrowing and *Easy Finance Ltd.* Should have enquired about the same before providing such loan.

Conclusion: In the given question, *Easy Finance Ltd.* being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed the company is bound to pay the loan to *Easy Finance Ltd.*

Question No. 31

What do you mean by "Companies with charitable purpose" (Section 8) under the Companies Act, 2013? Mention the conditions of the issue and revocation of the license of such company by the government.

Answer:-

Provision: [Companies Act, 2013]

1. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

2. Power of Central government to issue the license-

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

3. The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the license and opportunity to be heard in the matter.

4. Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Question No. 32

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 Crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-Convertible Debentures stands at ₹120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

Answer

As per Section 2(c) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement. The term "Total Share Capital" means the aggregate of the - (a) Paid-up equity share capital and (b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹15 cr, which is less than requisite control of 20% of total share capital (i.e. ₹100 cr) to have a significant influence of XYZ Ltd.

Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding allotment of non-convertible debentures has no relevance for ascertaining significant influence.

Question No. 33

SK Infrastructure Limited has a paid up share capital divided into 6,00,000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.

Answer

Government Company [Section 2(45) of the Companies Act, 2013]. Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or governments, or (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of ₹100 each, 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, SK Infrastructure Limited is a Government company

Question 34

Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about ₹ 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so?

Answer

As per the provisions of Sub-Rule (7) of Rule 3 of the Companies (Incorporation) Rules, 2014, an OPC can now be converted any time into public or private company

In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March, 2019 was ₹2.25 Crores. Anil can convert company.

Question 35

Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors.

They took over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

Answer

It was decided by the court in the case of Gifford Motor Co. Vs. Home, that if the company is formed simply as a mere device to evade legal obligations, though this is only limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

On considering the decision taken in Gifford Motor Co. Vs. Home and facts of the problem given, it is very much clear that Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

Question 36

Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of ₹100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?

Answer According to provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or governments, or
- (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

Question 37

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.

- (ii) 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 extend 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 38

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

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 - - restricts the right to transfer its shares:

- (i) 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
 - (ii) 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

- iv. On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employed 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.

Question 38

A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards. However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013. Discuss what powers can be exercised by the central government against ABC club, in such a case?

Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects.

Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since ABC Club was a Section 8 company and it was observed on 30th September, 2019 that it had started violating the objects of its objective clause.

Hence in such a situation the following powers can be exercised by the Central Government:

- 1) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put Limited or Private Limited against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

2. Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

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

Question 39

An employee Mr. Karan signed a contract with his employer company ABC Limited that he will not solicit the customers after leaving the employment from the company. But after Mr. Karan left ABC Limited, he started up his own company PQR Limited and he started soliciting the customers of ABC Limited for his own business purposes.

ABC Limited filed a case against Mr. Karan for breach of the employment contract and for soliciting their customers for own business. Mr. Karan contended that there is corporate veil between him, and his company and he should not be personally held liable for this.

In this context, the company ABC Limited seek your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company?

Answer

Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company. However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company.

Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- 1) To determine the character of the company i.e. to find out whether co-enemy or friend
- 2) To protect revenue/tax
- 3) To avoid a legal obligation
- 4) Formation of subsidiaries to act as agents
- 5) Company formed for fraud/improper conduct or to defeat law

Based on the above provisions and leading case law of *Gilford Motor Co. Vs Horne*, the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

Question 40

A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013

Answer

If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company.

The facts of the case are similar to the case of *Merchandise Transport Limited vs. British Transport Commission (1982)*, wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were held to be one commercial unit and the application for licences was rejected. Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

Question 41

ABC Pvt Ltd. has been oversteering expenditures in their Profit & Loss account for the past few years. On Inquiry, it was found that the mere purpose was to avoid tax. However, there was no fraudulent intentions. Should the corporate veil of the company be lifted? Kindly justify.

Answer

Corporate veil refers to the concept that members of a company are shielded from liability connected to the company's action. It is the legal concept whereby the company is identified separately from the members of the company. However, under the below circumstances, the company law disregards the principle of corporate personality. - To determine the character of the company

- 1) To protect revenue/tax
- 2) To avoid a legal obligation
- 3) Formation of subsidiaries to act as agents

Company formed for fraud/improper conduct.

In the given scenario, though the intention of the company was not fraudulent to defeat law, it had the intention of avoiding taxes and protecting revenue.

Hence, corporate veil should be lifted and the principles of corporate personality will be disregarded.

Question 42

A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contended that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company kept a general meeting by giving only 14 days' notice. Is this valid?

Answer

A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong. Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

Question 43

Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

Answer

Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

Question 44

The Articles of Association of Aarna Limited empowers its managing agents to borrow loan on behalf of the company. Ms. Anila, the director of the company, borrowed ₹18 Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan. Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013?

Answer

Doctrine of Indoor Management According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect the external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Quick Finance Limited being external to the company, need not enquire whether the necessary resolution was passed properly. Even if Aarna Limited claims that no resolution authorizing the loan was passed, Aarna Limited is bound to repay the loan to Quick Finance Limited.

Differences need to know -

- ① Agreement and Contract (MISL)
- ② Void Contract and voidable contract (MCCPR)
- ③ Void agreement vs illegal agreement (SMP)
- ④ wagering agreement - contract of insurance.

Implied warranties

- ① w certainty of quest-position,
- ② w certainty freedom from encumbrances
- ③ w certainty quantity of fitness by use of trade

