

Indian Contract Act, 1872

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.

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 so as 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, so as 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.

Answer:

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

"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.

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.

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?

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 daughter, to pay an annuity to Mr. Sawant.
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.

Answer:

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.

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?

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.

Answer:

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

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

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

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.

Answer:

- a. **Void Agreement:** As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

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

Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay Rs 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.

Provision: [Section 43 Indian Contract Act, 1872]

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

Facts of Case:

1. Ajay, Vijay, and Sanjay were partners of a software business. They jointly promises 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.

Answer:

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 ($\frac{1}{4}^{\text{th}}$ 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.)

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 $\frac{1}{5}$ 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.

Provision: [Section 43 Indian Contract Act, 1872]

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

Facts of Case:

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

Answer:

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.)

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.

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.
2. Later Shanti Traders procured the machinery from another manufacture for Rs. 12.75 lakhs
3. 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.

Answer:

1. 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.
2. 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.

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?

Provision: [Section 27 Indian Contract Act, 1872]

1. 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.
2. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

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

Answer:

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.

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.

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 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.

Answer:

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.

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?

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.

Answer:

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.

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.

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.

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?

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.

Answer:

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.

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

- a. 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.
- b. 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.
- c. Mr. X Agrees to write A book with A publisher. After few days, X dies in An Accident.

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".

Answer:

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.
3. 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.

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

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.

Answer:

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.

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

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.

Answer:

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 Amount of damages would have been the difference between the contract price And the market price on the day of default. In other words, the Amount of damages would be Rs 750/- (i.e. 1000 Water bottles x 0.75 paise).

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.

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

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

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 happening performance can be enforced only when happening of that even becomes impossible (Sec. 33).
 - c) If a contract is contingent upon, how a person will act at an unspecified time the even shall be considered to become impossible; when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34,35).
 - d) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

Explain the-term ‘Quasi Contracts’ and state their characteristics.

Provision: [Indian Contract Act, 1872]

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

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

Distinction between Void and Illegal Agreements.

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.

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

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

Answer: [Indian Contract Act, 1872]

- (i) 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.

- (ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

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

(iii) The above contract is a void contract.

Void Contract: Section 2 (j) 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.

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

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.

Answer:

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.

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.

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.

Answer:

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.

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

Provision: [Section 30 of Indian Contract Act, 1872]

1. 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
 - a) **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.
 - b) **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.
 - c) **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.
 - d) **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

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

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

1. 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.

2. 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 promises to deliver goods to B on a certain day on payment of ₹ 1,00,000. A dies 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.

3. Analysis of Section 37

- a) 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.
- b) 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.
- c) 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.
- d) 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.

Answer:

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

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

Provision: [Indian Contract Act, 1872]

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

restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

5. The claim for quantum meruit arises in the following cases:

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

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

Provision: [Indian Contract Act, 1872]

1. 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).
2. 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.
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 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.
 - e) 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.
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 event has happened. If the event becomes impossible, such contracts become void. (Section 32).
 - b) Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that event becomes impossible (Section 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 and 35).
- d) 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).

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?

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.

Answer:

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.

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.

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:

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.

Answer:

Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with 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.

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.

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.

Answer:

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.

P Comment on the following statements:

- a) Acceptance must be absolute and unqualified.
- b) Acceptance must be in the prescribed mode.

Answer: [Indian Contract Act, 1872]

- a) **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.

b) 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 fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

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.

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 any one claiming under him; by misleading another to his prejudice or to the prejudice of any one 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.

Answer:

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.

No consideration, no contract” Comment.

Or

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

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 honour 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 promise. 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.

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

Provision: [Indian Contract Act, 1872]

1. 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 happen (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.
2. 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 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.
 - e) 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.
3. 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 event has happened. If the event becomes impossible, such contracts become void. (Section 32).
 - b) Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that event becomes impossible (Section 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).

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

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?

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.

Answer:

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.

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

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

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.

Answer:

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 are 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.

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

Provision: [Indian Contract Act, 1872]

1. 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.
2. Quasi-contracts are based on the principles of equity, justice and good conscience.
3. The salient features of quasi-contracts are:
 - a) such a right is always a right to money and generally, though not always, to a liquidated sum of money;
 - b) does not arise from any agreement between the parties concerned but the obligation is imposed by law and;
 - c) 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.
4. Circumstances Identified as Quasi-Contracts:
 - a) **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.
 - b) **Payment by an interested person:** A person who has paid a sum of money, which another person is obliged to pay, is entitled to be reimbursed by that other person if the payment has been made by him to protect his own interest.
 - c) **Obligation of person enjoying benefits of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
 - d) **Responsibility of finder of goods:** A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a Bailee.
 - e) **Liability for money paid or thing delivered by mistake or by coercion :** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.
5. In all the above cases contractual liability arises without any agreement between the parties.

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

Provision: [Indian Contract Act, 1872]

1. 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.

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

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?

Provision: [Indian Contract Act, 1872]

1. Finder may claim compensation for the trouble and expenses incurred by him to preserve the goods and to find out the true owner.
2. If the owner refuses to pay compensation then may retain the goods until he receives it. However, he cannot make a suit for this.
3. If any reward has been announced by the owner he has a right to claim such reward. He can even sue for the reward.
4. 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 normally sold in the market.
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 charges of the finder amounts to two-thirds or more of the value of the article found.

Answer:

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.

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

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

- a) **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.
- b) **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.
- c) **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.
- d) **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.
- e) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- f) **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.
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.
- g) **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.
- h) **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.

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:

- (i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

Provision: [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.

Answer:

- (i) Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.
- (ii) Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.
- (iii) Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

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

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.

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.

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.

Answer:

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.

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

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 in to 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 shop-keeper refused to hand over the dress to Ms. Lovely

Answer:

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.

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

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 counter offer
6. By the non- acceptance of the offer according to the prescribed or usual mode
7. By subsequent illegality

Distinguish between wagering agreement and contract of insurance.

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 an 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. |

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

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:

- a) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- b) the active concealment of a fact by one having knowledge or belief of the fact;
- c) a promise made without any intention of performing it;
- d) 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.

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2018, Mr. Sohanlal 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?

Provision: [Indian Contract Act, 1872]

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

Facts of case:

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

Answer:

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.

"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?

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.
 - 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.

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

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.

The Companies Act, 2013

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

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 dis-similarities 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.

Answer:

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

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 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 and
 - 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 same privileges and obligations as of a limited company.

Briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

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.
2. 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].
3. 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.
4. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.
5. 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.
6. 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.
7. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.
8. 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 ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

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'.

Provision:

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

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

Likewise, in *Morris v 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 Bihari Lal vs Dinshaw & Co.* the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

Similarly, in the case of *Haughton & Co. v. Nothard, Lowe & Wills Ltd.* where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff 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 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.

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?

Provision:

1. The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization.
2. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).
3. The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

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.

Answer:

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

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?

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

1. One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.
2. Rules regarding its membership:
 - a) Only one person as member.
 - 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 182 days during the immediately preceding one calendar year)-
 - i. shall be eligible to incorporate a OPC
 - ii. 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.
4. OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of 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

Answer:

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.

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:**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.

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

Provision: [Section 455 of Companies Act, 2013]

1. 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.
2. "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.
3. "Significant accounting transaction" means any transaction other than
 - a) payment of fees by a company to the Registrar
 - b) payments made by it to fulfil the requirements of this Act or any other law
 - c) allotment of shares to fulfil the requirements of this Act and
 - d) payments for maintenance of its office and records.

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

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.

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.

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. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Facts of case:

In given case articles of association of XYZ Ltd. Provides that BOD have authority to issue bonds provided it need to be authorised 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.

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.

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 constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts.
2. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company.
3. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.
4. This is based on the concept called Lifting of Corporate Veil in which by lifting the veil court sees the persons who are actually liable for the misconduct done by such persons who acts behinds the veil of company.

Facts of case:

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

Answer:

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.

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

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

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, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

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

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

1. Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
2. Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:

- a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
 - b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or
3. Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Facts of case:

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

Answer:

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.

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**

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 arises only on the incorporation of the company as stated in section 9. Before its incorporation a company does not exist.
- 4. Being nonexistent, it can neither act in its own behalf nor expressly or implicitly appoint agents to act on its behalf.
- 5. Further, under the principle of constructive notice, every person entering into a contract with a company is presumed to have knowledge of its documents such as the Memorandum, Articles and

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.

Answer:

- 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.

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.

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 (5×1) – 5
- e) Others – 5

2. The Board of Directors of the company propose to convert it into a private company.

Answer:

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 (5×1) – 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.

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. Decide, under the provisions of The Companies Act, 2013, whether the companies can be exempted from the said contractual liability.

Provision: [Companies Act, 2013]

1. 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

Answer:

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.

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?

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.

Answer:

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.

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?

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 a 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 or 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.

Answer:

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.

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

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.

Answer:

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.

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

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

Answer:

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.

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

Provision: [Companies Act, 2013]

1. As per the provisions of the Companies Act, 2013, the meaning of the term 'ultra vires' is simply "beyond powers". The acts done by the company beyond its object clause of the Memorandum of Association are void.
2. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
3. In the leading case law of Ashbury Railway Carriage and Iron Company Limited V. Riche, the main business of the company was to make, sell or lend on hire, railway carriages or wagon and to carry on the business of mechanical engineers and general contractors.
4. The directors of the company entered into a contract with Riche for financing the construction of a railway line in Belgium and the company further ratified this act of the directors by passing a special resolution.
5. Riche, however, repudiated the contract as being ultra vires and the company brought an action for damages for breach of contract. Its contention was that the contract was well within the meaning of the word 'general contractors' and hence within its powers.

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

Fact of case:

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

Answer:

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 authorises 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 authorises the company to carry on any business which can be advantageously carried on in connection with company's present business because it is a specified purpose for alternation of object clause.

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.

Provision: [Companies Act, 2013]

- 1. Under the Companies Act, 2013 Section 8 companies are prohibited to distribute dividends to its shareholders. It can pay interest but cannot pay dividend.
- 2. 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.

Answer:

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

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.

Provision: [Companies Act, 2013]

Meaning of Lifting the Corporate Veil:

1. The company has a separate legal entity from its members. This principle is called the 'Veil of Incorporation'.
2. All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
3. 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.
4. 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.
5. **The circumstances or the cases in which the Courts have disregarded the corporate personality of the company are:**
 - a) **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. (**Juggilal 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**) (**Gilford 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. (**Daimler 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). (**Gilford 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 or 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 disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy. (**Connors v. Connors 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.

Answer:

Therefore, Promotor can be made liable when they do any misconduct behind the veil of company.

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]

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.

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?

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.

2. 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.

Answer:

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.

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

Provision: [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 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. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

Fact 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.

Answer:

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

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

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

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.

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.

Fact of case:

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

Answer:

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.

State the limitations of the doctrine of indoor management under the Companies Act, 2013.**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 Bihari Lal vs Dinshaw & Co. the plaintiff accepted a transfer of a company’s property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company’s property.

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.

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. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

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

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 Rs.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.

Answer:

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.

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

Provision: [Companies Act, 2013]

1. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
 - a) promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
 - b) Such company intends to apply its profit in promoting its objects and
 - c) prohibiting the payment of any dividend to its members.
2. Power of Central government to issue the license—
 - 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 same privileges and obligations as of a limited company.
3. 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.
4. Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Limited Liability Partnership, 2008

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

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 organising 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.

State the essentials required for incorporation of the LLP.

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. Atleast 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 Resevation

- ♦ The first step to incorporate Limited Liability Partnership is reservation of name of LLP.
- ♦ 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

- ♦ Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- ♦ LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP

Explain the process of Registration of LLP**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)

State the Contents of LLP Agreement ?**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.

Differentiate between a LLP and a partnership firm?**Provision:** [The LLP Act,2008]**Difference between LLP and Partnership Firm**

| 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. |

Differentiate between a LLP and Limited Liability Company?

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 Private company to contain the 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 |

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

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

Change of name of LLP (Section 17 of LLP Act, 2008):

1. Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —
 - a) is a name referred to in sub-section (2) of section 15; or
 - b) is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,
2. The Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.
3. Punishment for not complying with above provisions will be as follow :
 - a) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.
 - b) The designated partner of such LLP shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 1 Lakh.

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

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.

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

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

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

What are the effects of registration of LLP?

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

1. On registration, a LLP shall, by its name, be capable of—
 - a) suing and being sued;

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