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1. THE INDIAN CONTRACT ACT, 1872

ICAI MODULE, RTP & MOCK TEST, PAST EXAM PAPER QUESTIONS

UNIT 1: NATURE OF CONTRACTS

1. All contracts are agreements, but all agreements are not contracts”. Comment
(ICAI Module)
2. Define the term “Acceptance. Discuss the legal provisions relating to communication of acceptance.
3. Distinction between Void and Illegal Agreements.
4. Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?
5. Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.
(Nov’18- 5 Marks)
6. Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.
(Nov’20 RTP, Nov’20- 7 Marks)
7. Father promised to pay his son a sum of’ one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State, along with reasons whether son can recover the amount under the Indian Contract Act, 1872.
8. Shambhu Dayal started “self-service” system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.
(ICAI Module, May’19 ICAI Mock Test, May’21 Mock Test)
9. 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 in the light of the following:

- (i) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
- (ii) The telegram of revocation and letter of acceptance both reached together.

(Nov'18 ICAI RTP)

10. X's brother runs away from the house. Y who is an employee of X offers to search for the brother and goes out for the purpose. In the absence of Y, X offers a reward of 500 to anyone who can either find out the brother or give clues enabling X to find him out. Y gets the brother back to X in ignorance of the offer for reward. Can Y now claim the reward?

11. 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

(Nov'18 ICAI RTP)

12. Comment on the following statements:

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

(May'19 ICAI RTP)

13. 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?

(ICAI Module, Nov'19 ICAI RTP)

14. 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.

(ICAI Module, May'20 ICAI RTP)

15. State whether there is any contract in following cases:

- (a) A engages B to do certain work and remuneration to be paid as fixed by C.
- (b) A and B promise to pay for the studies of their maid's son
- (c) A takes a seat in public bus.
- (d) A, a chartered accountant promises to help his friend to file his return.

(ICAI Module)

16. Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages? (ICAI Module)
17. 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 he 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. (Nov'18-3 Marks)
18. A shop keeper displayed a pair of dress in the show room and a price tag of ₹ 2,000 was attached to the dress. Mrs. Lovely, looked at 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 Mrs. Lovely in consideration of the price stated in the price tag attached to the dress. Mrs. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (Nov'18- 3 Marks)
19. Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.
Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.
Examine with reference to the Indian Contract Act, 1872:
(i) On which date, the offer made by Mr. B will complete?
(ii) Discuss the validity of acceptance.
(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? (Nov'20- 6 Marks)
20. Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:
(i) X promise to sell his scooter to Y for ₹ 1 Lac. However, the consent of X has been procured by Y at a gun point.
(ii) A bought goods from B in 2015. But no payment was made till 2019.
(iii) G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month.

UNIT 2 : CONSIDERATION

1. Define consideration. State the characteristics of a valid consideration.
(Nov'18 ICAI RTP, Nov'19 ICAI RTP, May'19 ICAI Mock Test, Nov'19- 7 Marks, May'21 Mock Test)
2. "No consideration, no contract" Comment.
(May'18- 5 Marks, May'19 ICAI RTP, Nov'19 ICAI RTP, May'19 ICAI Mock Test)
OR
The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872. (Nov'20- 5 Marks)
3. "To form a valid contract, consideration must be adequate". Comment
(ICAI Module, Nov'19 ICAI Mock Test, Nov'20 RTP, May'21 RTP)
4. Only a person who is party to a contract can sue on it". Explain this statement and describe its exceptions, if any. (May'20 ICAI RTP)
OR
Explain Doctrine of Privity of Contract
5. 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 ₹ 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? (Nov'18 ICAI RTP)
6. Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2020, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2020 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.
Now Mr. Chotelal wants to file a case against the purchaser and get a suitable

redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action? (ICAI Module, May'19- 4 Marks)

UNIT 3: ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. Define Fraud whether "mere silence will amount to fraud" as per the Indian contract Act, 1872?
(May'18-5 Marks, ICAI Module, Nov'18 ICAI RTP, May'19 ICAI Mock Test, May'19- 7 Marks)
2. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss. (ICAI Module)
3. "An agreement, the meaning of which is not certain, is void". Discuss. (ICAI Module)
4. Who are disqualified persons to do the contract?
5. Explain the concept of 'misrepresentation' in matters of contract.
(May'19 ICAI RTP, May'20 ICAI RTP)
6. 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.
(May'20 ICAI RTP)
7. What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void.
(May'20 ICAI RTP)
8. Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him".
(May'18- 2 marks)
9. Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872.
(Nov'19- 5 Marks)
10. Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872.
(May'19- 5 Marks)
11. Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.
(Jan'21- 7 Marks)
12. Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of' 1 lakh from Suresh for the payment of his college fee and agreed

to pay by 30th May, 2012. Ramesh possesses assets worth 10 lakhs. On due date, Ramesh fails to pay back the loan to Suresh. Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. (ICAI Module, May'20 ICAI RTP)

13. 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.
(ICAI Module, May'19 ICAI RTP, May'20 ICAI RTP, May'21 Mock Test)
14. X agreed to become an assistant for 5 years to 'Y' who was a Doctor practicing at Ludhiana. It was also agreed that during the term of agreement X will not practice on his own account in Ludhiana. At the end of one year, X left the assistantship of 'Y' and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether X could be restrained from doing so?
15. M promised to pay N for his services at his (M) sole discretion found to be fair and reasonable. However, N dissatisfied with the payment made by M and wanted to sue him. Decide whether N can sue M under the provisions of the Indian Contract Act, 1872?
16. A applies to banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Is the contract induced by undue influence?
17. Point out with reason whether the following agreements are valid or void:
- Kamala promises Ramesh to lend ₹ 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
 - Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
 - Ram sells the goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India.
 - In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
 - Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.
(Nov'18 ICAI RTP, Nov'19 ICAI Mock Test)
18. 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.

(May'19 ICAI RTP, May'21 Mock Test)

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

(ICAI Module, Nov'19 ICAI RTP)

20. Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ₹ 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying ₹ 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.

(ICAI Module, May'21 RTP)

21. Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹10 Lakhs as consideration to Mr. S in order to induce him to retire.

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

(Nov'20 - 4 Marks, May'21 RTP)

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

(Jan'21- 4 Marks)

UNIT 4: PERFORMANCE OF CONTRACT

1. “The basic rule is that the promisor must perform exactly what he has promised to perform.” Explain stating the obligation of parties to contracts. (May’20 ICAI RTP)
2. Discuss the effect of accepting performance from third person.
3. “When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract” .Explain. (May’21 RTP)
4. What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? (May’20 ICAI RTP)
5. Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay 6,00,000 to Kartik. Over a period of time 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.
(May’18- 4 Marks, Nov’18 ICAI RTP, May’19 ICAI Mock Test, May’21 Mock Test)
6. Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.
7. Suppose, time is of the essence of the contract but yet promisor does not perform the promise within the stipulated time. But five days after the expiry of the stipulated time, the promisor offers to perform his promise. Can the promisee accept such performance and at the same time claim compensation from the promisor for the delay?
8. A owes B ₹ 1,000 under a contract, B owes C ₹ 1,000. B orders A to credit C with ₹ 1,000 in his books, but C does not assent to the arrangement. Does B still owe C ₹ 1,000?
9. A agrees to sell land to B for ₹ 40,000. B pays to A ₹ 4,000 as a deposit at the time of the contract, the amount to be forfeited to A if B does not complete the sale within a specified period. B fails to complete the sale within the specified period, nor is the

ready and willing to complete the sale within a reasonable time after the expiry of that period. Can A rescind the contract and at the same time retain the deposit?

10. X received certain goods from Y and promised to pay ₹ 60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays ₹ 40,000 to Y on behalf of X. however, X was not aware of the payment. Now Y is intending to sue X for the amount of ₹ 60,000. Can Y do so? Advice. (May'19 ICAI RTP)
11. 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.
- (ICAI Module, Nov'19 ICAI RTP)
12. Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of Rs. 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of Rs. 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of Rs. 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (Nov'18- 4 Marks, May'19 ICAI Mock Test, May'21 Mock Test)
13. Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months. On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet? Discuss in light of the Indian Contract Act, 1872?
- (i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
 - (ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

(ICAI Module, May'19- 6 Marks)

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

(ICAI Module, Nov'20 RTP)

15. Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020. (i) ₹ 12,120 which was due in May 2016. (ii) ₹ 5,650 which was due in August 2018 (iii) ₹ 9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

- (i) A cheque of ₹ 9,680
- (ii) A cheque of ₹ 15,000

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

(ICAI Module)

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

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

(ICAI Module, May'21 RTP)

17. Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datural on 26.02.2019. The borrower Mr. Datural 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. Datural while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjusted ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

- (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?

(Nov'19- 6 Marks)

UNIT 5: BREACH OF CONTRACT

1. "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts.
(ICAI Module, Nov'18 ICAI RTP, May'19 ICAI Mock Test, Nov'19 ICAI Mock Test, May'21 Mock Test)
2. "When a contract has been broken, the party who suffers by such a breach is entitled to receive compensation for any loss or damage caused to him". Discuss.
3. "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. (ICAI Module, May'21 RTP)
4. What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872? (Nov'19 ICAI RTP)
5. State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872. (May'19 ICAI Mock Test, May'21 Mock Test)
6. A, an Indian, contracts to marry B. A is already married - a fact of which B was unaware. A breaks his promise in course of time. Thereupon B brings a suit against A for a breach of contract. A pleads that his promise is impossible of being performed as the law of the country does not permit polygamy. Can A get away with plea?
7. Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urid Dhall on 10.11.2006 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr.

Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid Dhall was sky rocketing to ₹ 50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to ₹ 53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.

8. '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. (ICAI Module, May'19 ICAI Mock Test, Nov'20 RTP)
9. Evergreen Ltd., contracts with Shakti Traders to make and deliver certain machinery to them by 30th June, 2004 for Rs. 11.50 lakhs. Due to labour strike, Evergreen Ltd. could not manufacture and deliver the machinery to Shakti Traders. Later, Shakti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shakti Traders was also prevented from performing a contract which it had made with Xylo Traders at the time of their contract with Evergreen Ltd. and were compelled to pay compensation for breach of contract. Advise Shakti Traders the amount of compensation which it can claim from Evergreen Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (May'18- 6 Marks, Nov'19 ICAI Mock Test)
10. (i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?
- (ii) Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?
- (iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

(Jan'21- 6 Marks, May'21 RTP)

UNIT 6 : CONTINGENT & QUASI CONTRACTS

1. Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.
(Nov'18- 7 Marks, May'19 ICAI RTP, May'20 ICAI RTP)
2. Explain the-term 'Quasi Contracts' and state their characteristics.
(ICAI Module, Nov'19 ICAI RTP, Nov'20 RTP)
3. Distinction between Wagering Agreement and Contract of Insurance
(May'18- 2 Marks, Jan'21- 5 Marks)
4. Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?
5. 'A' under a mistaken impression gives some money into B's hand believing him to 'C'. Can he obtains the return of money?
6. P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?
(ICAI Module)
7. X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.
In the light of the Indian Contract Act, 1872, can X recover it from the Manager?
(Nov'19- 4 Marks)



UNIT 1: NATURE OF CONTRACTS

1. An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.
- a) All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract.
- b) All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract.

Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2. According to Section 2(b), the term 'acceptance' is defined as follows:
"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."
An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct.

The legal provisions relating to communication of acceptance are contained in Section The communication of an acceptance is complete:

- a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;
- b) as against the acceptor, when it comes to the knowledge of the proposer.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely:

- (i) by any act or
- (ii) by omission intending thereby communicate to the other or which has the effect of communicating it to the other.

The first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, etc. Oral words would include telephone

messages. Any conduct would include positive acts or signs so that the other person understands

what the person acting or making signs means to say or convey.

Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes of communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by everyone, as acceptance by act or conduct, unless there is an indication to the contrary.

3. Difference between Void agreement and illegal agreement is as follows:

Basis of difference	Void agreement	Illegal agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden under law.	Are forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

4. **Definition:** The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

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

- Must be capable of creating legal relation.
- Must be certain, definite and not vague.
- Must be communicated.
- Must be made with a view to obtaining the assent of the other party
- May be conditional
- Offer should not contain a term the non compliance of which would amount to acceptance
- May be general or specific
- May be expressed or implied
- A statement of price is not an offer

Offer and an Invitation to an offer: In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence, the only thing that is required is the willingness of the offeree to abide by the terms of offer.

5. Modes of revocation of Offer

- (i) By notice of revocation
- (ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- (iii) By non-fulfillment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- (iv) 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.
- (v) By counter offer
- (vi) By the non- acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality

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

Legal Rules regarding a valid acceptance

- (1) Acceptance can be given only by the person to whom offer is made. In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.
- (2) Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.
- (3) The acceptance must be communicated: To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of

the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.

- (4) Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
- (5) Time: Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
- (6) Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
- (7) Acceptance by conduct/ Implied Acceptance: Section 8 of the Act lays down that “the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

7. As per Section 2(h) of Indian Contract Act, 1872 Contract is an agreement which is enforceable by law. Social agreements are not enforceable by law. As per case law Balfour v. Balfour, a husband promised to pay maintenance allowance every month to his wife, so long as they remain separate. When he failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

Father promised to pay his son a sum of one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. This is a social agreement which is not enforceable by law. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of 1 lakh from father for the reasons explained above.

8. As per provisions of Indian Contract Act 1872, the offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an

offer on those terms. This is the basic distinction between offer and invitation to offer. In the given question, the display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. Therefore, if the cashier does not accept the price, the interested buyer cannot compel him to sell.

9. The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (i) Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
- (ii) 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.

10. As per the provisions of the Indian Contract Act, 1872, a person cannot accept an offer so long as he is unaware of its existence. Unless an offer is properly communicated, there can be no acceptance of it. An acceptance of an offer in ignorance of the offer, is a nullity, and does not create any legal right or obligation. As per case law *Lalman Shukla vs Gauri Dutt*, Gauri announced a reward for anyone who found his nephew. Lalman found the nephew in ignorance of reward. Held that, he is not entitled to reward as a person cannot accept an offer so long as he is unaware of its existence. In the given question, Y gets the brother back in ignorance of the offer for reward. Hence, based on provisions and the above case law, Y cannot claim the reward.

11. **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.

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

12. (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.

- (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.

13. Offer should not contain a term, non-fulfilment of which would lead to acceptance. Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance.

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

14. (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.

15. (a) It is a valid express contract
(b) It is not a contract as it is a social agreement

- (c) It is an implied contract. A is bound to pay for the bus fare.
- (d) It is a social agreement without any intention to create a legal relationship.

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

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

17. Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. 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.

18. The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

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.

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

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

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

April 2020 but he reads the letter on 13th April 2020.

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

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

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

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

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

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

20. (i) In the instant case, X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.
- (ii) B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.
- (iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month, the contract is executory because it is yet to be carried out.

UNIT 2 : CONSIDERATION

1. **Definition of Consideration-Section 2(d)** : “When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”

The essential characteristics of a valid consideration are as follows:

- (1) Consideration must move at the desire of the promisor
- (2) It may proceed from the promisee or any other person on his behalf.
- (3) It may be executed or executory. It may be past, present or future.
- (4) It must be real and have some value in the eyes of law.
- (5) It must not be something which the promisor is already legally bound to do.
- (6) It must not be unlawful, immoral or opposed to public policy.
- (7) Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.
- (8) It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

2. **No consideration, no contract:** Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility.

No consideration, no contract is a general rule. However **Section 25** of the Indian Contract Act provides some exceptions to this rule, where an agreement without consideration will be valid and binding. These exceptions are as follows:

- (1) **Out of Natural Love and Affection:**

Where an agreement is expressed in writing and registered under law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in a near relation to each other is enforceable even if there is no consideration. Nearness of relationship, however, does not necessarily imply love and affection.

- (2) **Compensation paid for past voluntary services:**

A promise to compensate wholly or in part for past voluntary services rendered by someone to promisor does not require consideration for being enforced. In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

- (i) The services should have been rendered voluntarily.
- (ii) The services must have been rendered for the promisor.
- (iii) The promisor must be in existence at the time when services were rendered.
- (iv) The promisor must have intended to compensate the promisee.

(3) **Promise to pay debts barred by limitation:**

Where there is a promise in writing to pay a debt, which was barred by limitation, is valid without consideration.

(4) **Creation of Agency:**

No consideration is necessary to create an agency

(5) **In case of completed gifts, no consideration is necessary.**

(6) **Bailment:**

Bailment is a contract where goods are delivered for a particular purpose and once the purpose is served, goods are to be returned back. There are 2 parties; bailor and bailee.

Bailment can be gratuitous. i.e. without consideration.

(7) **Charity**

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

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

4. Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.

The aforesaid rule, that stranger to a contract cannot sue is known as a “doctrine of privity of contract”, is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

- (1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (2) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- (3) In the case of certain marriage contracts, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
- (4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.

- (5) Acknowledgement or estoppel – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
- (6) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.
- (7) Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

5. In India, consideration may proceed from the promisee or any other person who is not a party to the contract. 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. In other words, there can be a stranger to a consideration but not stranger to a contract. The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. 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. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

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.

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

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

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but

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

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

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

UNIT 3: ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. ‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
 - (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
 - (2) the active concealment of a fact by one having knowledge or belief of the fact;
 - (3) a promise made without any intention of performing it;
 - (4) any other act fitted to deceive;
 - (5) any such act or omission as the law specially declares to be fraudulent.

Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

Silence is fraud in following cases:

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

Following contracts come within this category:

- (a) Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.
- (b) Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.
- (c) Contracts of marriage: Every material fact must be disclosed by the

parties to a contract of marriage.

- (d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.
- (e) Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

2. **Where the silence itself is equivalent to speech:** 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.

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

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

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

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

4. The following persons, who are disqualified by the law to which they are subject, are not competent to enter into a contract.

1. **Alien enemies:**

An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or an 'alien enemy.' If the country of the alien is at peace with the country of his stay, he is an alien friend. And if a war is declared between the two countries, he is termed as an alien enemy.

2. **Insolvents:**

When a person is declared as an insolvent, his property shall vest with the Receiver or 'Official Assignee.' However, this disqualification of an insolvent is removed 'when the court passes an order of discharge i.e when he is declared as solvent again.

3. **Convicts:**

A convict cannot enter into a contract while he is undergoing imprisonment. But when he is pardoned or the punishment gets over, he becomes capable of entering into a contract. Thus, the incapacity is only during the period of punishment.
4. **Corporation and a company:**

The contractual capacity of the corporation is expressly defined by the Special Act under which it is created. Whereas, the contractual capacity of a company, registered under the Companies Act 2013, is regulated by the terms of its 'Memorandum of Association' and the provisions of the Companies Act. If a company enters into a contract which is outside its object clause given in Memorandum of Association, it is void-ab-initio.
5. **Foreign sovereigns, diplomatic staff, and accredited representatives of foreign states:**

Such persons can enter into valid contracts and can enforce them in Indian courts. However, a suit cannot be filed against them, in the Indian courts, without the prior sanction of the central government.
5. **Misrepresentation:** According to **Section 18** of the Indian Contract Act, 1872, misrepresentation means and includes-
 - (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
 - (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;
 - (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.
6. **Position to dominate the will:** 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.

7. **Wagering agreement (Section 30 of the Indian Contract Act, 1872):** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. 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.

Transactions resembling with wagering transaction but are not void

- (i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
 - (ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
 - (iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions 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.
 - (iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.
8. **Minor is liable to pay for the necessaries supplied to him:** This statement is incorrect. The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. A claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.
9. **Coercion (Section 15 of the Indian Contract Act, 1872):** "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person

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

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

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

10. 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.

11. Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive another party thereto or to induce him to enter into the contract :

1. The active concealment of a fact by one having knowledge or belief of the fact;
2. A promise made without any intention of performing it;
3. Any other act fitted to deceive(cheat);
4. Any such act or omission as the law specially declares to be fraudulent.
5. Person making the statement does not believe it as true

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

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

12. According to **Section 11** of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus Ramesh who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose]. **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. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity.

Thus, according to the above provision, Suresh will be entitled to recover the amount of loan given to Ramesh for payment of the college fees from the property of the minor.

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

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [**Section 19**, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale.

14. An agreement in restraint of trade/business/profession is void under **Section 27** of the Indian Contract Act, 1872. But an agreement of service by which a person binds himself during the term of the 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.

In the given question, X agreed to become an assistant for 5 years to 'Y' who was a Doctor practicing at Ludhiana. It was also agreed that during the term of agreement X will not practice on his own account in Ludhiana. Such agreement is not in restraint of trade and hence it is valid.

Therefore X can be restrained by an injunction from practicing on his own account in Ludhiana.

15. As per **section 29** of the Indian Contract Act, 1872 - agreements, the meaning of which is not certain, or capable of being made certain, are void. In the given question, M promised to pay N for his services at his (M) sole discretion found to be fair and reasonable. Here the agreement is uncertain in terms of amount of salary. Therefore, N's suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract.
16. As per **Section 16** of Indian Contract Act, 1872, A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other. In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.
17. Validity of agreements
- 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.
 - 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.
 - 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.
 - Void Agreement: An agreement in restraint of legal proceedings is void as per **Section 28** of the Indian Contract Act, 1872.
 - Valid Agreement: An agreement with alien friend is valid, but an agreement with alien enemy is void.
18. According to **section 17** of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless

the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

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

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

A person is deemed to be in position to dominate the will of another:

- (a) Where he holds a real or apparent authority over the other; or
- (b) Where he stands in a fiduciary relationship to the other; or
- (c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Therefore, in the given question, yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true. But, if the party had means of discovering the truth with ordinary diligence, the contract is not voidable if the party whose consent was so caused

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

21. **Section 10** of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. **Section 23** of the said Act also states that every agreement of which the object or consideration is unlawful is void.

The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

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

Here, Mr. S's promise of sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay ₹10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

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

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under **section 28** of the Indian Contract Act, 1872. Hence, Mr. C in the given case cannot recover the amount of ₹ 10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

UNIT 4: PERFORMANCE OF CONTRACT

1. Obligations of parties to contracts (Section 37)

The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

A contract being an agreement enforceable by law creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise.

He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused. Thus, from above it can be drawn that performance may be actual or offer to perform.

2. Effect of accepting performance from third person (Section 41)

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, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

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

3. Effect of a Refusal of Party to Perform Promise

According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

From language of Section 39 it is clear that in the case under consideration, the

following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance. In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

4. Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.

For the application of this doctrine, two conditions must be fulfilled:

- (1) It is only available if the original contract has been discharged.
- (2) The claim must be brought by a party not in default.

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

The claim for quantum meruit arises in the following cases:

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

5. As per **Section 43** of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may in the absence of express agreement to the contrary, compel anyone or more of such joint promisors to perform the whole of the promise. In such a situation the performing promisor can enforce contribution from other joint promisors. If anyone or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal share. In the given question, Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹ 6,00,000 to Kartik. But Vijay became insolvent, but his assets

are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. So Vijay will be able to pay only 50,000 (1/4th of 200,000) Therefore, in the instant case, Sanjay is entitled to receive ₹50,000 from Vijay's assets and ₹ 2,75,000 from Ajay.

6. According to **Section 56** of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case. The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract. In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting **Section 56** and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.
7. As per **Section 55** of Indian Contract Act, 1872, where the intention of the parties is that the time should be of the essence of the contract the contract must be performed within the fixed time. And if the party, who is bound to perform his promise within the fixed time, fails to do so then the contract becomes voidable at the option of the other party. Thus, the innocent party may put an end to the contract if he so chooses and he can also claim damages. In the given question, time is of the essence of the contract but yet promisor does not perform the promise within the stipulated time. But five days after the expiry of the stipulated time, the promisor offers to perform his promise. With respect to above provisions, promisee can accept such performance and at the same time claim compensation from the promisor for the delay.
8. As per **Section 62** of Indian Contract Act, 1872, the term 'novation' means the substitution of existing contract for a new contract. In other words, when the parties to a contract agree to substitute the existing contract by a new contract, it is known as novation. The novation must be with the mutual consent of all the parties. In the given question, A owes B ₹ 1,000 under a contract, B owes C ₹ ,000. B orders A to credit C with ₹ 1,000 in his books, but C does not assent to the arrangement. Hence, there is no valid novation. Therefore, B still owes C ₹ 1,000.

9. As per **Section 54** of Indian Contract Act, 1872, if the promises are conditional and dependent, the performance of the promise by one party depends on the prior performance of the promise by the other party. In such promises if the party who is bound to perform his promise first, fails to perform it, then he cannot claim performance from the other party. Moreover, the defaulting party becomes liable to pay the compensation to the other party for the loss suffered by the other on account of the non- performing of the contract.

In the given question, A agrees to sell land to B for ₹ 40,000. B pays to A ₹ 4,000 as a deposit at the time of the contract, the amount to be forfeited to A if B does not complete the sale within a specified period. B fails to complete the sale within the specified period, nor is the ready and willing to complete the sale within a reasonable time after the expiry of that period.

Therefore, A can rescind the contract and at the same time retain the deposit

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

11. **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. 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.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but “joint and several”. **Section 43** provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

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

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X,Y and Z are joint promisors.
- (ii) Legal representative of X 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.

12. Subsequent or Supervening impossibility (Becomes impossible after entering into contract): When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.

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

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

Hence, the contention of Mr. Y is correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or

under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.

- (ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.
- (iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately. Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

UNIT 5: BREACH OF CONTRACT

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.

Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

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

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

But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration,

may still perform his part of the, contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

2. Compensation for loss or damage caused by breach of contract (Section 73)

When a contract has been broken, the party who suffers by such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

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

3. 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.

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

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

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. Court laid down that the aggrieved party should not be allowed to claim a sum greater than what is specified in the written agreement

4. Compensation on Breach of Contract: Section 73 of the Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. The explanation to the section further provides that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

5. Discharge of a Contract:

A Contract may be discharged either by an act of parties or by an operation of law

which may be enumerated as follows:

- (1) Discharge by performance which may be actual performance or attempted performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.
- (2) Discharge by mutual agreement: **Section 62** of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.
- (3) Discharge by impossibility of performance: The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non-occurrence of particular state of things (d) the declaration of war (**Section 56**).
- (4) Discharge by lapse of time: A contract should be performed within a specific period as prescribed in the Law of Limitation Act., 1963. If it is not performed the party is deprived of remedy at law.
- (5) Discharge by operation of law: It may occur by death of the promisor, by insolvency etc.
- (6) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (**Section 64**).
- (7) A promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction he thinks fit. In other words, a contract may be discharged by remission. (**Section 63**).
- (8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (**Section 67**).
- (9) Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

6. As per **Section 73** of Indian Contract Act, 1872, the vindictive damages are claim with the intention of punishing the party in default. As a general rule, the exemplary damages are not awarded for the breach of contract as they are punitive in nature. However, in following case, the court may award exemplary damages:
Where there is a breach of a promise to marry: In such cases, the damages will include compensation for loss to the feelings and reputation of the aggrieved party. In the given question, A, an Indian, contracts to marry B. A is already married - a fact of which B was unaware. A breaks his promise in course of time. Thereupon B brings a suit against A for a breach of contract. A pleads that his promise is impossible of being performed as the law of the country does not permit polygamy. A can get away with the plea as the marriage cannot be forced upon. However, he is liable to vindictive damages as stated above.
7. The stated problem falls under the head 'anticipatory breach of contract' as per The Indian Contract Act, 1872. Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfilment of the promise by the promisor is over. As per details in the problem, price as contracted ₹ 40 per kg on 10.11. 2006 rose to ₹ 50 per kg as on 4.12.2006 and finally to ₹ 53 per kg, on 09.12.2006. The answer to the problem is that
1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of ₹ 10 per kg viz. ₹ 1, 00,000.
 2. He could wait till 09.12.2006 and claim ₹ 130,000 i.e. ₹ 13 per kg.
 3. If the Government, in the interim period i.e. between 04.12.2006 and 09.12. 2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.
8. **BREACH OF CONTRACT- DAMAGES:** **Section 73** of the Indian Contract Act, 1872 lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.
The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the

parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of **Section 73** of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ₹ 500/- at the rate of 0.50 paise i.e. 1000 water bottles × 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ₹ 750/- (i.e. 1000 water bottles × 0.75 paise).

9. **Section 73** of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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

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

10.

- (i) As per **Section 51** of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

- (ii) 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.

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

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

- (iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

UNIT 6 : CONTINGENT & QUASI CONTRACTS

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. 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.

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

- (i) There must be a contract to do or not to do something,
- (ii) The performance of the contract must depend upon the happening or non-happening of some event.
- (iii) The happening of the event is uncertain.
- (iv) 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.
- (v) 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.

The rules regarding the contingent contract are as follows”

- (1) Contingent contract dependent on the happening of an uncertain future cannot be enforced until the event has happened. If the even becomes impossible, such contracts become void. (Sec.32).
 - (2) 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).
 - (3) 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).
 - (4) The contingent contracts to do or not to do anything if an impossible even happens are void whether or not the fact is known to the parties (Sec. 36).
2. Quasi Contracts: Under certain special circumstances obligations resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as ‘Quasi-contracts’. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to

enrich himself unjustly at the expense of another. The salient features of a quasi-contract are:

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

3. Distinction between Wagering Agreement and Contract of Insurance

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

4. **Section 69** of the Indian Contract Act, 1872, provides that “A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. That means Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X. Hence, X is bound to make good to Y the amount so paid.
5. As per **Section 72** of Indian Contract Act, 1872, a certain amount of money is paid or something is delivered to a person by mistake or under coercion. In such cases, the person receiving the money or goods must repay or return the same to the person who has paid or delivered by a mistake or under coercion.
In the given question, A under a mistaken impression gives some money into B’s hand believing him to ‘C. He can obtain the return of money
6. Yes, P can recover the amount from D. **Section 69** states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other. In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D’s landlord as his carriage was seized by him. Hence being an interested party P made the payment and can recover the same from D.
7. Responsibility of finder of goods (**Section 71** of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.
Thus, a finder of lost goods has:
- (i) to take proper care of the property as man of ordinary prudence would take
 - (ii) no right to appropriate the goods and
 - (iii) to restore the goods if the owner is found.
- In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner.



QUESTION PAPER FOR SELF-PRACTICE

(TOTAL: 60 Marks)

- Q.1. (a) “The law of contracts is not the whole law of agreements nor is it the whole law of obligations.” – Comment. (4 marks)
- (b) “Good Girl” Soap Co. advertised that it would give a reward of ₹ 1,000 who developed skin disease after using, “Good Girl” soap of the company for a certain period according to the printed directions. Miss Rakhi purchased the advertised “Good Girl” and developed skin disease in spite of using this soap according to the printed instructions. She claimed reward of ₹ 1,000. The company refused the reward on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Miss Rakhi can claim the reward or not. Refer the relevant case law, if any. (4 marks)
- (c) Mr. X was in need of money & offered to sell his casio to Z for ₹ 6000. Z refused to buy the same at the stated price. X gradually reduced the quoted price until ₹ 2000 was reached, which Z accepted. Before the casio was delivered, X received an offer from Mr. A for the purchase of his casio for ₹ 4500 and X refused to carry out his contract with Z on the grounds that the consideration was inadequate. Is Mr. X liable to pay damages to Mr. Z for the failure to perform the contract? (4 marks)
- Q.2. (a) R & S two brothers entered into a contract for the division of the family property between them and agreed to contribute 20000 each, per month towards the maintenance of their mother. Can the mother enforce the contribution under the contract? (3 marks)
- (b) A, honestly believing that his watch is made in Switzerland agreed to sell it to B by representing that the watch is made in Switzerland. Subsequently, it is discovered that the watch is made in India. What is the remedy of B? Will your answer be different had A known that his watch was made in India. (5 marks)
- (c) X and Y were running two organizations trading in wheat of ‘Popular Brand’ in Uttar Pradesh. X realized that the wheat business is high yielding. To expand his business X offered Y a sum of Rs.10 Lakhs on the condition that Y shall not sell “Popular Brand” Wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y, filed a suit against X for non-fulfilment of the promise. Is the suit maintainable? (4 marks)

- Q.3. (a) X purchased a steamer ticket for travelling from Dublin to Whitehaven. Terms & conditions were printed on the back of the ticket. One of the conditions prescribed that the shipping company shall not be liable in the event of loss/injury or delay to the passengers or their luggage. X did not see the back of the ticket and there was no instruction on the face of the ticket to see the back for the terms & conditions. During the journey X's luggage is lost due to negligence of the staff on board. X claims loss from the shipping company which denies its liability on the grounds that the company has expressly excluded its liability at the time of formation of contract. Comment whether the shipping company's stand is tenable in the context of provisions of the Indian Contract Act, 1872. (4 marks)
- (b) Mr. Seth an Industrialist has been fighting a long-drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872. (4 marks)
- (c) A bank wrongfully dishonoured a cheque of 1,000 belonging to Dhanna Seth (a Millionaire). He says that his credit has come down to the level of Mofatlal (a person having only a few thousand rupees) as his cheque of 1000 has been dishonoured wrongfully by the bank. Advise Dhanna Seth. (4 marks)
- Q.4. (a) On 20th September X agreed to sell to Y of 10 tons of a particular chemical to be manufactured in his factory @ Rs. 8,000 per ton to be delivered on 20th October. Calculate the amount of damages which could be recovered by Y from X in each of alternative cases:
Case (a): The chemical could not be manufactured because of strike by the workers and X failed to supply the said chemical to Y on 20th October when the price of that chemical was Rs. 12,000 per ton.
- (b) On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to Rs. 10,000 per ton on 1st October. The price of that chemical, further rose to Rs. 12,000 per ton on 20th October. Y decided to rescind the contract on 1st October.
- (c) On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to Rs. 10,000 per ton on 1st October. The price of that chemical, further rose to Rs. 12,000 per ton on 20th October. Y decided

not to rescind the contract on 1st October and to wait till 20th October. On 19th October, the entire chemical in the factory was destroyed by fire without the fault of either party. (6 marks)

- (b) A agreed to sell rice to B. Both A and B believed that the rice is old /Basmati and a very high price is settled. Subsequently, it is discovered that rice is new one. Can B get back his price? Will your answer be different if B alone purchased the rice thinking it to be old basmati? (3 marks)
- (c) A received certain goods from B promising to pay 1,00,000. Later on A, expressed his inability to make payment. C, who is known to A, makes payment of 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of 1,00,000. Discuss whether the contention of B is right? (3 marks)

- Q.5. (a) B sent a draft agreement relating to supply of coal and coke to Manager of a Railway Company for his acceptance. The Manager wrote "approved" on the same and put the draft in his table drawer, intending to send it to the company's solicitors for a formal contract to be drawn up. By oversight, the draft agreement remained in the drawer. Comment on the validity of the contract in the light of the Indian Contract Act, 1872. (4 marks)
- (b) Explain Doctrine of Privity of Contract (4 marks)
- (c) (i) A shopkeeper exhibits an article in his shop window with a price tag attached to it. A customer offers to buy the article for the same price. Is the shopkeeper bound to part with the article receiving the price offered by the customer? (2 marks)
- (ii) A railway passenger receives a ticket on the face of which is printed 'This ticket is issued subject to rules/regulations/conditions contained in the current timetable of the railways'. Comment on whether he is bound by these terms. (2 marks)

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2. THE SALE OF GOODS ACT, 1930

ICAI MODULE, RTP & MOCK TEST, PAST EXAM PAPER QUESTIONS

UNIT - 1: FORMATION OF THE CONTRACT OF SALE

1. What are the consequences of “destruction of goods” under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected? (Nov’20 RTP)
2. In what ways does a “Sale” differ from “Hire-Purchase”?
3. State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act. (Nov’18 ICAI RTP, May’19 ICAI RTP, May’20 ICAI RTP, May’21 RTP)
4. Explain the term “Delivery and its forms” under the Sale of Goods Act, 1930. (May’18- 4 Marks, May’19 ICAI Mock Test, Nov’19 ICAI Mock Test, May’21 Mock Test)
5. Explain the difference between Sale and Agreement to sell under the Sale of Goods Act, 1930. (May’19 ICAI Mock Test, May’21 Mock Test)
6. Differentiate between Ascertained and Unascertained Goods with example. (Nov’18- 4 Marks)
7. Ms Prachi Dutt has hired 100 laptops for her office @Rs30000 per laptop (Rs3000000) for a monthly rent of Rs1 lakh. The stipulation is that if Ms Prachi pays the rent regularly for 20 months, she is entitled to either exercise the option of purchasing all the laptops or return the laptops immediately after 20 months. However, if purchase option is exercised, the installment facility would continue. She decides to exercise the purchase option. Is this a valid contract?
8. Mr Jigar Dhuvad agrees to sell his second hand Maruti Omni Van to Mr Katta for a price to be determined by Mr Dutta. Mr Katta took delivery of the Vehicle. Mr Dutta refuses to fix the price. Mr Jigar Dhuvad wants the vehicle back. What is the position?

9. Mr Pruthvi Raj Chavan of Bangalore entered into contract for selling 10000 kgs of grapes in his garden in Kolar with Mr Menezes of Goa, a fruit merchant. The grapes were destroyed before the date of the agreement though Mr Pruthvi Raj Chavan was not aware of the same. The grapes could, however, be used for preparing wine. Mr Pruthvi Raj Chavan compels Mr Menezes to purchase the same. Is the contract valid?
10. Classify the following transactions according to the types of goods they are:
- (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
 - (ii) A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop.
 - (iii) T agrees to sell to S all the oranges which will be produced in his garden this year. (ICAI Module, Nov'19 ICAI RTP)
11. A agrees to buy a new TV from a shop keeper for Rs. 30,000 payable partly in cash of Rs. 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer. (ICAI Module)
12. A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930? (ICAI Module)
13. X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? (ICAI Module)

UNIT - 2: CONDITIONS & WARRANTIES

1. What do you understand by "Caveat-Emptor" under the Sale of Goods Act, 1930? What are the exceptions to this rule? (Nov'18- 6 Marks, Nov'20-4 Marks)
2. What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operatives under the said Act. (Nov'19 ICAI RTP, May'19 ICAI Mock Test)
3. "There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale" Discuss the significance and state exceptions, if any. (Nov'18 ICAI RTP)

4. Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.
(May'19 ICAI RTP, Nov'20 RTP, Jan'21- 6 Marks, May'21 RTP,)
5. What is an Implied Warranty and state the various types of Implied Warranties.
(May'19- 4 Marks, May'20 ICAI RTP, May'21 Mock Test)
6. Mr A sold a tin of cleaning acid to Mrs B. Mr A knew that it was likely to be dangerous to Mrs B if she does not exercise caution and special care while opening the lid. Mrs B opened the tin in the normal course and her face was defaced by sprinkles of acid. Can she file a case against Mr A?
7. Ms Pooja goes to a beauty salon. She asks for a facial and a hairdo. She does not disclose any allergies to the beautician. The beautician applied some hair dye without asking anything about the possible allergies. Ms Pooja developed dermatitis. Is the beautician liable?
8. X agrees to supply to Y a certain quantity of timber of half-inch thickness. The timber actually supplied varies in thickness from one third inch to five-eighth inch. The timber is merchantable and commercially fit for the purpose for which it was ordered. Y rejects the timber. Is his action justified?
9. Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim?
(May'20 ICAI RTP)
10. M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc. Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements. The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

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

- (i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (ICAI Module, May'19- 6 Marks)

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

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

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? (ICAI Module, Nov'19- 6 Marks)

12. Mrs. G bought a tweed coat from P. When she used the coat she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs. G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930? (ICAI Module, May'21 RTP)
13. Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930. (ICAI Module)
14. A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930? (ICAI Module)

15. Mr. T was a retailer trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.
- Discuss whether Mr. T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930?
 - What is the remedy available to Mr. M? (Jan'21- 6 Marks, May'21 RTP)

UNIT - 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

- "Nemo Dat Quod Non Habet" - "None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.
(ICAI Module, May'19- 6 Marks, May'20 ICAI RTP, Nov'20- 6 Marks)
- What are the rules related to Acceptance of Delivery of Goods? (May'19 ICAI RTP)
- What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. (May'18- 6 marks, Nov'19- 4 Marks)
- Mr A, a farmer, sold his 4 cows to Mr B. In a period of 2 years, cows had given birth to 2 calves. Now Mr.A demands the calves back as he claims that he has just sold the cows and not the calves. State whether Mr. B is required to return the calves?
- A contracts to sell to B all the oil to be produced from groundnut harvested from A's farm. The crops having been harvested and oil made there from, A fills the oil in cans supplied by B. However, A hasn't yet informed B. Does the property in oil pass to B?
- P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument. When does the ownership get transferred?
- During ICL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. Will S get a good title?
- Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys

it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930? (ICAI Module, Nov'18 ICAI RTP)

9. Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer “on approval” or “on sale or return” or other similar terms, the property therein passes to the buyer. Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. (ICAI Module, Nov'18 ICAI RTP)
10. For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930? (May'19 ICAI RTP)
11. J the owner of a car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than 50,000. The agent sells the car for 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed. (ICAI Module, Nov'19 ICAI RTP, Nov'20 RTP)
12. Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent? (May'19 ICAI Mock Test, May'20 ICAI RTP, ICAI Module, May'21 Mock Test)
13. Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

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

(Nov'18- 6 Marks, Nov'19 ICAI Mock Test)

14. A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not? (ICAI Module)
15. X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why? (ICAI Module)
16. The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930? (ICAI Module)
17. A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A files a suit against B for the recovery of price. Can he recover the price? (ICAI Module).
18. Ms. R owns a two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the two Wheeler from Mr. A. Will she succeed?
- (i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?
- (ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

(Nov'20- 6 Marks, May'21 RTP)

UNIT - 4: UNPAID SELLER

1. Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit". (Nov'18 ICAI RTP)
2. What do you understand by the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit? (May'19 ICAI Mock Test, Nov'19 ICAI Mock Test, May'21 Mock Test)
3. When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?
4. Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction." (Nov'18 ICAI RTP, Jan'21- 4 Marks)
5. What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930? (May'20 ICAI RTP)
6. What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (Nov'19- 6 Marks)
7. A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. Who shall bear the loss? What will be your answer if the antique gets damaged after the hammer was struck on table?
8. A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Can he do so?
9. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram still being unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (May'19 ICAI RTP)

10. Suraj sold his car to Sohan for 75,000. After inspection and satisfaction, Sohan paid 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan. (Nov'19 ICAI RTP, Nov'20 RTP)
11. Mr. D sold some goods to Mr. E for Rs. 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. (May'18- 6 Marks, May'19 ICAI Mock Test, May'21 Mock Test)
12. A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? (ICAI Module)
13. A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller? (ICAI Module)
14. J sold a machine to K. K gave a cheque for the payment. The cheque was dishonored. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930? (ICAI Module)



ANSWERS

UNIT - 1: FORMATION OF THE CONTRACT OF SALE

1. Destruction of Goods-Consequences:

❖ Goods perishing before making of contract (Section 7):

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

Example: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The contract is void-ab-initio.

❖ Goods perishing before sale but after agreement to sell (Section 8): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the contract becomes void\

❖ Goods perishing after contract of sale: The contract is already executed

2. The main points of distinction between the 'sale' and 'hire-purchase' are as follows:

SALE	HIRE-PURCHASE
1. Property in the goods is transferred to the buyer immediately at the time of Contract.	1. The property in goods passes to the hirer upon payment of the last instalment.
2. The position of the buyer is that of an Owner of the goods.	2. The position of the hirer is that of a bailee till he pays the last instalment.
3. The buyer cannot terminate the contract and is bound to pay the price of the goods.	3. The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
4. The seller takes the risk of any loss resulting from the insolvency of the buyer.	4. The owner takes no such risk, for if the hirer fails to pay an instalment the owner has right to take back the goods.
5. The buyer can resell the goods.	5. The hirer cannot resell the good still the last instalment.

6. Tax is levied at the time of the contract.	6. Tax is not leviable until it eventually converts into a sale.
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3. Essentials of Contract of Sale

Following are the essential elements of a valid contract of sale:

1. All the requirements of a valid contract must be fulfilled:

A contract of sale must fulfil all the requirements of a valid contract, e.g., free consent, consideration, competency of the parties, lawful object and consideration. If any of the essential elements of a valid contract is missing then the contract of sale will not be valid.

2. There must be two parties to the contract of sale:

There must be two parties, one seller and the other buyer. The reason for the same is that in a contract of sale, the ownership of the goods has to pass from one person to another.

3. There must be some goods as a subject-matter:

The 'goods' as defined in [Section 2 \(7\)](#) of the Sale of Goods Act.

4. The property in the goods must be transferred to the buyer:

The term 'property' in the goods means the ownership of the goods. In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. The term 'property' here means the general property, i.e., all ownership rights of the goods, and not merely a special property, i.e., limited rights such as right of a Pawnee.

5. There must be some price for the goods:

The goods must be sold for some price. The term 'price' is defined in [Section 2 \(10\)](#)

6. A contract of sale can be absolute or conditional [[Section 4\(2\)](#)].

Yes, there should be an agreement between the parties in order to constitute a sale under the said Act.

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

Forms of delivery: Following are the kinds of delivery for transfer of possession:

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

to hold them on behalf of B, at A's request.

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

5. Difference between Sale and Agreement to sell

SALE	AGREEMENT TO SELL
1. Transfer of property: the property in goods passes from the seller to the buyer immediately	1. Transfer of property: In agreement to sell, the ownership of the property will pass from the seller to the buyer at some future time or on fulfilment of some conditions.
2. Nature of contract: A sale is an executed contract	2. Nature of contract: An agreement to sell is an executory contract
3. Consequences of Breach by buyer : In a sale, if the buyer fails to pay for the goods, the seller can: <ul style="list-style-type: none"> i. Sue him for recovery of price ii. Claim damages 	3. Consequences of Breach by buyer : In an agreement to sell, the seller can only sue for damages for breach of contract
4. Consequences of Breach by seller : In a sale, if the seller defaults, i.e. commits a breach, the buyer can: <ul style="list-style-type: none"> 1. Claim delivery of the goods from third party 2. Sue for damages 	4. Consequences of Breach by seller: In the case of an agreement to sell, if the seller commits a breach, the buyer can only claim damages.
5. Transfer of risk: In a sale, if the goods are destroyed, the loss falls on the buyer even though they are in the possession of the seller.	5. Transfer of risk: In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though they are in the possession of the buyer.
6. Subsequent destruction: A subsequent loss or destruction of the goods is the liability of the buyer.	6. Subsequent destruction: Such loss or destruction is the liability of the seller.
7. Nature of rights: Creates Jus in rem	7. Nature of rights: Creates Jus in personam

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

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

7. Contract of sale resembles with contracts of hire purchase very closely, and the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire purchase agreements are governed by the Hire-purchase Act, 1972. Term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

- (a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments, and
- (b) The property in the goods is to pass to such person on the payment of the last of such instalments, and
- (c) Such person has a right to terminate the agreement at any time before the property so passes; None the less a sale has to be distinguished from a hire purchase as their legal incidents are quite different.

In the given question, it is a hire purchase contract. It is a valid contract.

8. **Section 10** of The Sale of Goods Act provides for the determination of price by a third party. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality. In the given question, Mr Jigar Dhuvad agrees to sell his second hand Maruti Omni Van to Mr Katta for a price to be determined by Mr Dutta. Mr Katta took delivery of the Vehicle. Mr Dutta refuses to fix the price. Mr Jigar Dhuvad cannot get the vehicle back. Mr Jigar has to accept a reasonable amount and Mr Katta has to pay a reasonable amount. Mr Jigar cannot call back the goods.

9. As per **section 7** of Sale of Goods Act, 1930, where there is a contract for the sale of specific goods, the agreement is void if the goods without the knowledge of the seller

have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract. In the given question, Mr Pruthvi Raj Chavan of Bangalore entered into contract for selling 10000 kgs of grapes in his garden in Kolar with Mr Menezes of Goa, a fruit merchant. The grapes were destroyed before the date of the agreement though Mr Pruthvi Raj Chavan was not aware of the same.

Since the goods no longer answered the description of fruits, the agreement is void.

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

11. It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods.

In the given case, the new TV set is agreed to be sold for ₹ 30,000 and the price is payable partly in exchange of old TV set and partly in cash of ₹ 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

12. In this case, B, the buyer has no right against A the seller. **Section 8** of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided. This provision is based on the ground of supervening impossibility of performance which makes a contract void.

So, all the following conditions required to treat it as a void contract are fulfilled in the above case:

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

13. Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price.

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

UNIT - 2: CONDITIONS & WARRANTIES

1. DOCTRINE OF CAVEAT EMPTOR (BUYER BEWARE) [SECTION 16]:

- ❖ 'Caveat Emptor' is a Latin expression which means "let the buyer beware".
- ❖ The Doctrine states generally seller is not responsible for bad goods.
- ❖ This Doctrine takes the side of the seller.
- ❖ As per the rule, seller is not responsible in following cases:-
 - (i) To know the particular purpose of buyer.
 - (ii) If buyer chooses the goods negligently
 - (iii) If the goods are defective and the defect is patent (i.e. defect which can be discovered by mere inspection)
- **Exceptions:** The exceptions to the doctrine of Caveat Emptor; which are mentioned below (i.e in the following seller is responsible) :
 1. Where the buyer specifies the particular purpose for which the goods are required to the seller.
 2. Where buyer relies on the seller's skill or judgment.
 3. Where there is contract of sale by sample, the rule of caveat emptor will not apply if the goods do not correspond with sample
 4. Where goods are bought by description, the goods shall correspond with the description.
 5. If the goods are bought both by sample as well as by description this rule will not apply if goods do not correspond with both sample and description.
 6. There is an implied condition that the goods shall be of merchantable quality
 7. When the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.
 8. When the goods are purchased under some brand name.

2. The-following are implied conditions in a contract of sale by sample in accordance with **Section 17** of the Sale of Goods Act, 1930;

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample
[Section 17(2)].

Implied Warranties:

1. **Warranty of quiet possession [Section 14(b)]:** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way deprived of the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
 2. **Warranty of freedom from encumbrances [Section 14(c)]:** The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
 3. **Warranty as to quality or fitness by usage of trade [Section 16(3)].** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
 4. **Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.
3. **Condition as to quality or fitness for buyer's purpose [Section 16(1)]:**
 - ❖ Ordinarily, there is no implied condition that the goods shall be fit for the particular purpose of the buyer.
 - ❖ Seller is not responsible:
 - (i) To know the particular purpose of buyer.
 - (ii) If buyer chooses the goods negligently.
 - ❖ However in following exceptions, there is an implied condition that the goods shall be fit for the buyer's specific purpose.
In following cases seller is responsible to the buyer:
 - (i) If the buyer makes his purpose clear to the seller.
 - (ii) If the buyer buys the goods 'relying upon his skill and judgment'

4. Distinction between condition & Warranty is as follows:

CONDITION	WARRANTY
1. A condition is essential to the main purpose of the contract.	1. It is only collateral to the main purpose of the contract.
2. In case of breach of condition, aggrieved party can: (i) Rescind the contract, return the goods and claim refund. (ii) Claim damages	2. In case of breach of warranty, aggrieved party can only claim damages.
3. A breach of condition may be treated as a breach of warranty	3. A breach of warranty cannot be treated as a breach of condition.

When a condition can be treated as a warranty [Section 13]:

1. Voluntary waiver of condition:

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

2. Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract

3. Compulsory waiver of a condition:

Where a contract of a sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a terms of the contract, express or implied, to that effect

4. Impossibility:

Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by reason of impossibility or otherwise.

5. **Implied Warranties:** It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

These may also be excluded by the course of dealings between the parties or by

usage of trade (Section 62).

The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

6. As per section 16 of Sale of Goods Act, 1930, where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

In the given question, Mr A sold a tin of cleaning acid to Mrs B. Mr A knew that it was likely to be dangerous to Mrs B if she does not exercise caution and special care while opening the lid. Mrs B opened the tin in the normal course and her face was defaced by sprinkles of acid. For all dangerous goods, the seller is bound to inform the buyers all the dangers inherent and the precautions to be taken.

Therefore, Mr A is liable for the damages.

7. As per section 16 of Sale of Goods Act, 1930, where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

In the given question, Ms Pooja goes to a beauty sale on. She asks for a facial and a hairdo. She does not disclose any allergies to the beautician. The beautician applied some hair dye without asking anything about the possible allergies. Ms Pooja developed dermatitis. Fitness of the dye extends to that of a normal person. If a

client has specific allergies, the client is bound to disclose the same. Therefore, the beautician is not liable.

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

In the given question, X agrees to supply to Y a certain quantity of timber of half-inch thickness. The timber actually supplied varies in thickness from one third inch to five- eight inch. Even though the timber is merchantable and commercially fit for the purpose for which it was ordered, Y can reject the same as it does correspond with the description. Therefore, Y's action is justified.

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

In the given question, Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition as to merchantability. Applying the provision of **Section 16(2)**, Mr. Amit would succeed in claim for damages from the owner of the shop.

10. (i) **Duty of the buyer according to the doctrine of "Caveat Emptor":**

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

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

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

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description

4. Goods of Merchantable Quality
 5. Sale by sample
 6. Goods by sample as well as description
 7. Trade usage
 8. Seller actively conceals a defect or is guilty of fraud
- (ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]
11. As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:
- (a) The bulk shall correspond with the sample in quality;
 - (b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - (i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.
 - (ii) In the instant case, the buyer does not have any option available to her for grievance redressal.
 - (iii) In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.
12. According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of “Caveat Emptor” that is “let the buyer beware”. But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller’s skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible. In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

13. In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to **Section 13(2)** of the Sales of Goods Act, 1930.
14. This is a case related to implied condition as to wholesomeness which provides that the eatables and provisions must be wholesome that is they must be fit for human consumption. In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and can also claim damages from the seller.
15. According to **Section 15** of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.
- Further, as per **Section 16(1)** of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
- (i) In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.
 - (ii) When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.

UNIT - 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

1. “Nemo dat quod non-habet”: This means that ‘no one can transfer a better title than he himself has’. Thus, the buyer cannot get a better title than that of the seller. If the seller’s own title is defective, the buyer’s title will also be defective. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller.

Exceptions:

In the following exceptional circumstances a non-owner can transfer a valid title to a bonafide buyer:

(i) **Sale by a mercantile agent (Section 27)**

Sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

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

(ii) **Sale by a joint owner (Section 28):** When the joint owner is in the sole possession of the goods, and he sells them to a person who buys in a good faith, the buyer gets a valid title to the goods.

(iii) **Sale by estoppel:** When the owner of goods, by his conduct or by statement, wilfully leads the buyer to believe that the seller has the authority to sell, then he is estopped (i.e., prevented) from denying the seller’s authority to sell

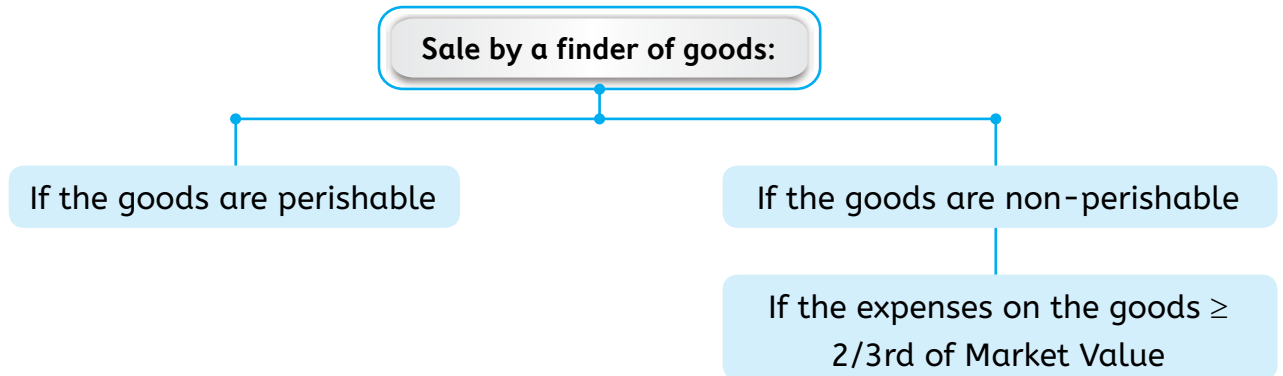
(iv) **Sale by unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer

(v) **Sale by a seller in possession of goods after their sale [Section 30(1)] :** If the seller continues to have the possession of the goods even after their sale and if he resells the same goods to a new buyer then in such cases, the second buyer gets a valid title to the goods if he buys them in a good faith.

(vi) **Sale by a buyer in possession of goods after their sale [Section 30(2)]:** If the buyer obtains the possession of the goods which he has bought or agreed to buy from the seller and the seller still has some lien or other rights over the goods.

If the buyer resells the same goods to a new person, in such cases, the second buyer gets a valid title free.

(vii)



(viii) **Sale by a person in possession under a voidable contract (Section 29):** The buyer gets a valid title only if the following conditions are satisfied:-

- a. A person must obtain the possession of the goods by coercion, undue influence, fraud or misrepresentation.
- b. The seller must have obtained the possession of the goods under a voidable contract and not under a void contract.
- c. The contract must not have been rescinded (i.e., put to an end) at the time of sale
- d. The buyer must act in a good faith.

(ix) **Sale Under the Provision of Other Acts :**

- a. Sale by an Official Receiver or Liquidator of the Company will give a valid title to the purchaser.
- b. Sale by a pawnee/pledgee under default of pawnor in repayment of debt will give valid title to the purchaser.

2. **Rule related to Acceptance of Delivery of Goods (Section 42):** Acceptance is deemed to take place when the buyer-

- (a) Intimates to the seller that he had accepted the goods; or
- (b) Does any act to the goods, which is inconsistent with the ownership of the seller; or
- (c) Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

➤ **Buyer not bound to return rejected goods (Section 43):** Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

- **Liability of buyer for neglecting or refusing delivery of goods (Section 44):** When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

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

The essentials regarding appropriation of unascertained goods are:

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

4. As per provisions of Sale of Goods Act 1930, the term 'property in the goods' is defined as the legal ownership of the goods. Transfer of Ownership means transfer of risk, rights and Returns pertaining to the goods.

In the given question, A, already sold his 4 cows to Mr B. So the calves of the cows also belong to Mr. B.

Therefore, Mr. B is not required to return calves to Mr.A.

5. As per provisions of Sale of Goods Act 1930, The ownership is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know about the act of the seller.

In the given question, A contracts to sell to B all the oil to be produced from groundnut harvested from A's farm. The crops having been harvested and oil made there from, A fills the oil in cans supplied by B. However, A hasn't yet informed B. Since B doesn't know about deliverable state, the property in oil does not pass to B.

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

to the buyer-

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

In the given question, P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument.

Therefore, the ownership is transferred when he has decided to purchase the instrument as his own.

7. As per **section 27** of Sale of Goods Act, 1930, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. However, if a person has sold goods but continues to be in possession of them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier.

In the given question, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale.

Hence, S will get a good title.

8. **Condition and warranty (Section 12):** A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

“A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated”.

“A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

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

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

9. As per the provisions of **section 24** of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-
- when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
 - if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
 - he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question. Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

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

In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply.

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

11. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to **Section 27**. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [**Section 2(9)**]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
- The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.

- (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

12. **Section 26** of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further **Section 18** read with **Section 23** of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

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

- (i) Where the bales have been selected with the consent of the buyer's representatives:
In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.
- (ii) Where the bales have not been selected with the consent of buyer's representatives.
In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

13.

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

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

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

- (iii) If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:
- (a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]
 - (b) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].
14. According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:-
- (i) One of the several joint owners has the sole possession of them.
 - (ii) Possession of the goods is by the permission of the co-owners.
 - (iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

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

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

15. According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:-

- (i) The seller has done his act of putting the goods in a deliverable state and
- (ii) The buyer has knowledge of it.

Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case, according to the provisions of law, 150 tons sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

The wheat which was put in the sacks fulfils both the conditions that are:

- (1) The wheat is put in a deliverable state in the sacks.
- (2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

16. According to **Section 24** of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-

- (i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.
- (ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

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

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

17. A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet.

Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days. The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24]

18. As per the provisions of **Section 24** of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-
- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
 - (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
 - (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

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

- (i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.
- (ii) It may be noted that where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

UNIT - 4: UNPAID SELLER

1. Right of Lien [section 47 to 49]

- The right of lien is the right to retain possession of the goods.
- This right can be exercised only when the possession of goods is with the seller.
- The unpaid seller of goods can retain his possession of goods until payment of the price in following cases[Section 47]:
 - e) Where the goods are not sold on credit.
 - f) Where the goods have been sold on credit, but the term of credit has expired
 - g) Where the buyer becomes insolvent.
- The unpaid seller can retain the goods only for the payment of the price of the goods: He cannot retain the goods for any other charges, e.g., maintenance, charges for storage of goods during the exercise of lien etc.
- **Part delivery (Section 48):** Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder
- The right of lien is indivisible in nature.
- **Termination of Lien (Section 49):**
 - a) By delivery of goods to the carrier/ buyer
 - b) By Estoppel i.e., where the seller by his conduct makes third parties believe that he has waived his right of lien.
 - c) By waiver of the lien
 - d) By payment of price by the buyer
- The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree (order from court) for the price of the goods.
- Distinction between Right of Lien and Right of Stoppage in transit

Right of Lien	Right of stoppage in transit
1. The essence of a right of lien is to retain possession	1. The essence of stoppage in transit is to regain possession
2. Seller should be in possession of goods under lien	2. In stoppage in transit, (i) seller should have parted with the possession (ii) possession should be with a carrier, & (iii) buyer has not acquired the possession.
3. Right of lien can be exercised even when the buyer is not insolvent.	3. Right of stoppage in transit can be exercised only when buyer becomes insolvent
4. Right of lien precedes right of stoppage in transit.	4. Right of stoppage in transit begins when the right of lien ends

2. Meaning of Unpaid Seller:

A seller will be called 'unpaid' if the following conditions are fulfilled:

- (1) The whole or part of the price has not been paid or tendered and that the seller has immediate right of action for the price.
- (2) A bill of exchange or other negotiable instrument has been received but the same has been dishonoured.

The right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The seller must be unpaid.
- (b) He must have parted with the possession of goods.
- (c) The goods are in transit.
- (d) The buyer has become insolvent.

3. Right of Lien

- The right of lien is the right to **retain possession** of the goods.
- This right can be exercised only when the possession of goods is with the seller.
- The unpaid seller of goods can retain his possession of goods until payment of the price in following cases [Section 47]:
 - a) Where the goods are not sold on credit.
 - b) Where the goods have been sold on credit, but the term of credit has expired
 - c) Where the buyer becomes insolvent.
- The unpaid seller can retain the goods only for the payment of the price of the goods: He cannot retain the goods for any other charges, e.g., maintenance, charges for storage of goods during the exercise of lien etc.
- **Part delivery (Section 48)**: Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder
- The right of lien is indivisible in nature.
- **Termination of Lien (Section 49)**:
 - a) By delivery of goods to the carrier/ buyer
 - b) By Estoppel i.e., where the seller by his conduct makes third parties believe that he has waived his right of lien.
 - c) By waiver of the lien
 - d) By payment of price by the buyer
- The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree (order from court) for the price of the goods.

4. An auction sale is a sale at which the auctioneer, as agent for the seller, invites persons present to bid for goods sold.

- Auctioneer acts in a dual capacity
 - Rules regarding Auction Sales:

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

 - a. **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
 - b. **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
 - c. **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
 - d. **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
 - e. **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
 - f. **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.
5. If the seller commits a breach of contract, the buyer gets the following rights against the seller:
1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
 2. **Suit for specific performance (Section 58):** Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
 3. **Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
 4. **Repudiation of contract before due date (Section 60):** Where either party to a

contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

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

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

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

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act. [**Sub-section (1)**]

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

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

- (i) **Right of lien (Section 47):** According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-
 - (a) where the goods have been sold without any stipulation as to credit;
 - (b) where the goods have been sold on credit, but the term of credit has expired;
 - (c) where the buyer becomes insolvent.
- (ii) **Right of stoppage in transit (Section 50):** When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.
- (iii) **Right to re-sell the goods (Section 54):** The unpaid seller can exercise the right to re-sell the goods under the following conditions:
 1. Where the goods are of a perishable nature
 2. Where he gives notice to the buyer of his intention to re-sell the goods

3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
 4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
 5. Where the property in goods has not passed to the buyer
7. Under **Section 26** of the Sale of Goods Act, unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not.
- In the given question, A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. Since, the ownership was not transferred, the loss will be borne by seller.
- But, if the antique gets damaged after the hammer was struck on table, the loss will be borne by buyer.
8. As per **section 53** of Sale of Goods Act 1930, the right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it. This is based on the principle that a second buyer cannot stand in a better position than his seller. However, when the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer, his right of lien or stoppage in transit is defeated.
- In the given question, A entered into a contract to sell cartons in possession of a what finger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now if B failed to make payment, the seller cannot exercise his right of lien as he had assented to the resale of the goods by the buyer to the sub-buyers.
- Therefore, he cannot exercise his right of lien.
9. Right of stoppage of goods in transit: The problem is based on **section 50** of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.
- (i) The seller must be unpaid
 - (ii) He must have parted with the possession of goods
 - (iii) The goods must be in transit
 - (iv) The buyer must have become insolvent
- Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

10. As per the **section 55** of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that
- (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [**Section 55(1)**].
 - (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [**Section 55(2)**].

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

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

11. Position of Mr. D: Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to **section 45(1)** of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- (i) **Rights of Mr. D:** As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:
 - (ii) **Suit for price (Section 55):** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
 - (iii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, **Section 73** of the Indian Contract Act, 1872 applies.
 - (iv) **Suit for interest (Section 61):** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.
 - (iv) **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

12. Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sales of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

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

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

13. The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.

This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-

1. The buyer has not paid the total price to the seller
2. The seller has delivered the goods to a carrier thereby losing his right of lien
3. The buyer has become insolvent
4. The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)

In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.

According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

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

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

In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So he is entitled to exercise the right of lien, but according to **section 53(1)** his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So R who has purchased the machine from K can demand the delivery of the machine.

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QUESTION PAPER FOR SELF-PRACTICE

(TOTAL: 40 Marks)

- Q.1. (a) For the purpose of making uniform for the employees, Mr. Yadav brought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots carriage lining. Advise Mr.Yadav whether he is entitled to have any remedy under the Sale of Goods Act, 1930 (5 marks)
- (b) What do you understand by “Caveat-Emptor” under the Sale of Goods Act, 1930?
What are the exceptions to this rule? (5 marks)
- (c) A offered to sell to B a certain machine for ₹ 50,000. B refused to buy it unless certain work was done on it to put it into a running condition. A agreed to do the same but while the machine was being repaired, it was destroyed without the fault of any person. Can A recover the price from B? (5 marks)
- Q.2. (a) Ashu of Bombay enters into an agreement with Jay of New Delhi to supply five motor-cycles to be delivered to the later at New Delhi. Ashu sends these motorcycles through Messers Deep Transport Ltd., a leading transporter. The motor cycle reach New Delhi on time but Jyoti delays to take delivery. M/s Deep Transporter informs Jyoti that the motor cycles are lying at their godown at Jyoti’srisk. Before taking the delivery of these motor-cycles, Jay becomes insolvent. Ashu wants to exercise his right of stoppage of goods in transit, under the Sale of Goods Act. Advise. (6 marks)
- (b) In what ways does a “Sale” differ from “Agreement to Sell”? (4 marks)
- Q.3. (a) What is an Implied Warranty and state the various types of Implied Warranties. (5 marks)
- (b) Explain essential elements of a valid contract of sale. (5 marks)
- (c) Explain “Goods” and types of Goods (5 marks)

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3. THE INDIAN PARTNERSHIP ACT, 1932

ICAI MODULE, RTP & MOCK TEST, PAST EXAM PAPER QUESTIONS

UNIT 1: GENERAL NATURE OF PARTNERSHIP

1. Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership by holding out. (Nov'20 RTP)
2. What is the true test of partnership?
OR
What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. (May'18- 4 marks)
OR
Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? (May'19- 4 Marks)
OR
"Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. (Nov'20- 4 Marks)
3. Enumerate the differences between Partnership and Joint Stock Company
4. What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration?
(ICAI Module, May'19 ICAI RTP, Nov'19 ICAI Mock Test)
5. What is Partnership Deed? What are the particulars that the partnership deed may contain?
(Nov'18 ICAI RTP, May'19 ICAI Mock Test)
OR
Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She want to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed?
(ICAI Module)
6. Distinguish between Partnership vs. Hindu Undivided Family. Write any two points.
(Nov'19 ICAI RTP)

7. “Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.” In light of the given statement, discuss the consequences of non- registration of the partnership firms In India?
(ICAI Module, May’18- 4 Marks, May’19- 4 Marks, Jan’21- 4 Marks, May’21 RTP, May’21 Mock Test)
8. What do you mean by “Particular Partnership” under the Indian Partnership Act, 1932?
(Nov’20- 2 Marks)
9. Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?
(Nov’20 – 2 Marks)
10. X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Will he succeed? .
(ICAI Module, Nov’19 ICAI RTP)
11. A partnership firm consisting of A, Band C as partners was formed and it commenced its business before getting itself registered. The firm filled a suit against X for a claim of Rs.5000 for goods supplied to him and immediately after filling the suit, the firm was registered. Will court consider the suit?

UNIT - 2: RELATIONS OF PARTNERS

1. What do you mean by “implied authority” of the partners in a firm? Point out the extent of partner’s implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932.
(May’19 ICAI RTP)
2. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?
(ICAI Module, Nov’18 ICAI RTP, May’19 ICAI Mock Test)
3. Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm and also state the liabilities of a minor partner both:
1. Before attaining majority and
 2. After attaining majority.

(ICAI Module, Nov’18- 6 Mark, May’19 ICAI Mock Test, May’21 Mock Test)

4. State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932:
 - (i) Retirement of a partner
 - (ii) Insolvency of a partner(Nov'19 ICAI RTP, Nov'19- 4 Marks)
5. What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? (May'19- 2 Marks)
6. Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? (May'19- 2 Marks)
7. When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? (Nov'19- 2 Marks)
8. What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? (Nov'19- 2 Marks, Jan'21- 2 Marks)
9. Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. (Nov'20- 4 Marks, May'21 RTP)
10. Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. (Jan'21- 2 Marks)
11. Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. (Jan'21- 4 Marks)
12. A, B, C & D established partnership business for refining sugar. A, who was himself a wholesale grocer, was entrusted with the work of selection and purchase of sugar. As a wholesale grocer, A was well aware of the variations in the sugar market and had the suitable sense of propriety as regards purchases of sugar. He had already in stock sugar purchased at a low price which he sold to the firm when it was in need of some, without informing the partners that the sugar sold had belonged to him. Was A bound to account to the firm for the profit so made by him?
13. A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. Considering the provisions of Indian Partnership Act,

1932 state whether they can expel a partner from the firm?

(May'18- 6 Marks, May'19 ICAI Mock Test, May'21 Mock Test)

14. A, B and C are partners in a manufacture of machinery. A is entitled to three-eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or settling accounts with his estate. Can A's official receiver demand any share?
15. Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932.
16. P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?
17. Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.
- Explain with reasons:
- Whether Ram's private estate is liable for the price of the machine purchased by the firm?
 - Against whom can the creditor obtain a decree for the recovery of the price?
18. A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.

What will be your advice in case M was having knowledge about the agreement?

(May'19 ICAI Mock Test, May'21 Mock Test)

19. Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932. (Nov'19 ICAI Mock Test)
20. A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? (ICAI Module, May'20 ICAI RTP)
21. M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.
- Examine whether action by the partners was justified or not?
 - What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (ICAI Module, May'19 – 6 Marks)
22. Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain:
- To what extent X will be liable if he failed to give public notice after attaining majority?
 - Can Mr. L recover his debt from X? (ICAI Module, Nov'19 – 6 Marks, Nov'20 RTP)
23. Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? (ICAI Module, May'21 RTP)
24. Mr. A, Mr. B and Mr. C were partners in a partnership firm ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly

written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letterheads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr X. (Nov'18- 3 Marks)

25. Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1M October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement.

After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (Nov'18 - 3 Marks)

26. P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

- (i) Rights of P & Q to start a competitive business.
- (ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

(Jan'21- 6 Marks)

UNIT - 3: DISSOLUTION OF FIRM

1. When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.
(Nov'19 ICAI RTP, May'19 ICAI Mock Test, May'21 Mock Test)
2. State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932? (Nov'18- 4 Marks, Nov'18 ICAI RTP, May'20 ICAI RTP)
3. Distinguish between dissolution of firm and dissolution of partnership.
(May'18- 2 Marks, Nov'19- 4 Marks)
4. X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, who is liable to R?



ANSWERS

UNIT 1: GENERAL NATURE OF PARTNERSHIP

- Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct has induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

Example: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z _led a suit against X and A for the recovery of price. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

- True Test of Partnership**
 - ❖ **Mode of determining existence of partnership (Section 6):** In determining whether a group of persons is a partnership firm or not or whether a person is or not a partner in a firm, all relevant facts should be taken together.
 - ❖ For determining the existence of partnership, it must be proved.
 - There was an **agreement** between all the persons concerned
 - The agreement was to **share the profits** of a business and
 - the business was **carried on by all or any of them** acting for all.
- Agreement:** Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.
 - Sharing of Profit:** As discussed earlier, sharing of profit is an essential element to constitute a partnership. **But, it is only a prima facie evidence and not conclusive evidence, in that regard.** The sharing of profits would not by itself make such persons partners. Although the right to participate in profits is a strong test

of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

As discussed above, a person, who receives the profits of a business, is not necessarily a partner. The persons who receive the profits but are not the partners are referred as under: (already explained above)

3. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties, a partnership may be deemed to exist.

Santiranjan Das Gupta Vs. Dasyran Murzamull (Supreme Court)

In Santiranjan Das Gupta Vs. Dasyran Murzamull, following factors weighed upon the Supreme Court to reach the conclusion that **there is no partnership between the parties:**

- (a) Parties have not retained any record of terms and conditions of partnership.
- (b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- (c) No account of the partnership was opened with any bank
- (d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

3. **Partnership and Joint Stock Company:**

Partnership	Company
1. A firm does not enjoy separate legal entity i.e. separate legal existence.	1. It has a separate legal existence.
2. The liability of the partner is unlimited.	2. Limited to the value of shares held by the members.
3. It does not enjoy a long lease of life because of dissolution due to different reasons.	3. It enjoys a perpetual existence.
4. Maximum partners can be 50.	4. In case of private limited company, Minimum members-2, maximum members -200 In case of public limited company, Minimum members -7, maximum members - no limit In case of One person Company (OPC)- only 1.

5. A partner cannot transfer his share without the consent of other partners.	5. A member can transfer his share as and when he wishes to.
6. There is mutual agency amongst the partners	6. There is no mutual agency amongst the members
7. Distribution of profits is compulsory as per the partnership deed	7. No such compulsion of distributing the profits.
8. The ownership & management lies with all the partners.	8. Ownership is with shareholders and the management is with board of directors
9. Property of the firm is the joint property of all the partners.	9. The property of company is not the joint property of the members.
10. The creditors of the firm can proceed against the partners jointly and severally.	10. The creditors of a company can proceed only against the company.
11. No compulsory Audit	11. Its compulsory

4. Registration of firm

- ❖ The registration of a firm is **not compulsory**. It is optional for the firm either to get itself registered or not. There is no penalty for non-registration of a firm. The registration can be done anytime, either in the beginning or during the continuance of business.
- ❖ **Procedure (Section 58):**
 1. **Step 1** - Obtain a statement in the form from the office of the Registrar.
 2. **Step 2** - State the following information:
 - Name of the firm
 - Principal place of the firm
 - Name of the other places where the firm carries its business
 - Date when each partner joined
 - Name in full and permanent address of each partner
 - Duration of the firm.
 3. **Step 3** - Get the statement of duly verified and signed by all the partners or their agents.
 4. **Step 4** - File the statement along with prescribed fees
 5. **Step 5** - Obtain a certificate or registration from the Registrar.
- ❖ **Section 59:** Registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

❖ Consequences of non-registration (Section 69):

1. The partners cannot file a suit against the firm or other partners:

A partner of an unregistered firm cannot file a suit against the firm or his other present or past partners, for the enforcement of any right arising from a contract or conferred by the Indian Partnership Act. However, this disability may be removed by getting the firm registered before filing the suit.

2. The firm cannot file a suit against third parties:

An unregistered firm cannot file a suit against any third party for the enforcement of any right arising from some contract.

This disability of an unregistered firm can be removed by getting the firm registered before filing the suit.

3. The partner of the firm cannot claim a set-off:

The term 'set-off' means the adjustment of debts by one party due to him from the other party who files a suit against him. The partners of an unregistered firm or the firm itself cannot claim a set-off, in a suit filed against them or the firm. But the right of set-off is not affected if the claim for set-off does not exceed Rs 100 in value.

4. Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

5. Partnership deed

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

❖ Partnership deed may contain the following information:-

1. Name of the partnership form.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.

8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

6. Partnership and Hindu Undivided Family:

Partnership	HUF
1. It arises from agreement	1. It arises by status.
2. Governed by Indian Partnership Act, 1932.	2. It is governed by Hindu Law.
3. Maximum partners can be 50.	3. No such limit is applicable here.
4. A person can be admitted by the consent of the other existing partners.	4. A male/ female person becomes a member merely by his birth.
5. A minor can be admitted only to the benefits of the firm.	5. A male/female minor becomes a member merely by his birth.
6. Each partner is implied authority to bind the firm for the actions done by him in the daily course of business.	6. Only Karta has such authority.
7. Unlimited liability.	7. Karta's liability is unlimited and the coparcener's liability is limited to their share in the family property
8. Each partner has the right to ask for the books of accounts and also for the profits and losses.	8. The coparceners have no such right
9. Incase of death of a partner, partnership is dissolved unless otherwise agreed.	9. HUF continues to operate even after death of a coparcener.

7. It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

Following are consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under **Section 69**, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and

the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm

- (ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

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

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

9. Nominal Partner: A person who lends his name to the firm, without having any real Liabilities: He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

10. As per **section 28** of Indian Partnership act, 1932, partnership by holding out/estoppel is where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct might have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical. In the given question, X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. The Manager is also liable for the price because he becomes a partner by holding out.

Therefore, Z will succeed.

11. **Section 69** of The Indian Partnership Act, 1932 specifies that an unregistered firm cannot file a suit against any third party to enforce a right arising from a contract. This clause does not prohibit an unregistered firm to enter into contract with third parties; the bar is only against taking action against third parties. However, the third parties are free to take action against unregistered partnership.
- In the given question, partnership firm consisting of A, B and C as partners was formed and it commenced its business before getting itself registered. The firm filed a suit against X for a claim of Rs.5000 for goods supplied to him and immediately after filing the suit, the firm was registered.
- When the firm filed a suit, it was unregistered, so subsequent registration will not make any difference.
- Therefore, court will not consider the suit.

UNIT - 2: RELATIONS OF PARTNERS

1. **Implied Authority Of Partner As Agent Of The Firm (Section 19):** Subject to the provisions of **section 22**, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
- The authority of a partner to bind the firm conferred by this section is called his "implied authority".
- In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
- Submit a dispute relating to the business of the firm to arbitration;
 - Open a banking account on behalf of the firm in his own name;
 - Compromise or relinquish any claim or portion of a claim by the firm;
 - Withdraw a suit or proceedings _led on behalf of the firm;
 - Admit any liability in a suit or proceedings against the firm;
 - Acquire immovable property on behalf of the firm;
 - Transfer immovable property belonging to the firm; and
 - Enter into partnership on behalf of the firm.
- Mode of Doing Act To Bind Firm (Section 22):** In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.
- Authority in an emergency (Section 21):** A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm

2. Transfer of partner's interest (Section 29):

A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the transferee of a partner's interest by sale, or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

1) During the continuance of partnership, such transferee is NOT entitled

- a) to interfere with the conduct of the business,
- b) to require accounts, or
- c) to inspect books of the firm.

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

2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

- a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

3. Minor's position in partnership firm (Section 30)

A minor cannot become a partner in a firm because partnership is founded on a contract and contract with a minor is void-ab-initio. Though a minor cannot be a partner in a firm, he can be admitted to the benefits of partnership with the consent of all the partners.

(i) Rights:

- i. A minor partner has a right to his agreed share of the profits and property of the firm.
- ii. He can have access to, inspect and copy the accounts of the firm.
- iii. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- iv. Right to become a partner within 6 months from the date of attaining majority or when he comes to know whichever is later.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

(ii) (1) Liabilities of a minor partner before attaining majority:

- (a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- (b) Minor has no personal liability for the debts of the firm incurred during his minority.

(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

(2) **Liabilities of a minor partner after attaining majority:** Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

4. (i) Retirement of a Partner (Section 32)

- ❖ A partner may also retire from an existing firm. The partner who retires from an existing firm is known as a 'retiring partner' or an 'outgoing partner'.
 - ❖ A partner may retire from the firm in anyone of the following three modes :
 - (a) By consent. A partner may retire, at any time with the consent of all other partners.
 - (b) By agreement. The partners may enter into an express agreement about the retirement of a partner. In such cases, a partner may retire according to the terms of the agreement.
 - (c) By notice. In case of partnership at will, a partner may retire by given a written notice of retirement to all other partners.
 - ❖ Retirement of a partner from a firm does not dissolve it unless the firm has only 2 partners.
 - ❖ The liability of a retiring partner may be discuss as under :
 1. **Liability for the acts of the firm done before retirement:**
A retiring partner continues to be liable to third parties for the acts of the firm done before his retirement unless there is an agreement made by him with the third party concerned and the partners of the reconstituted firm. Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement.
 2. **Liability for the acts of the firm done after retirement:**
A retiring partner also continues to be liable to third parties for the acts of the firm done even after his retirement until a public notice of his retirement is given This liability of a retiring partner is based on the principle of 'holding out'.
- (ii) **Insolvency of a Partner (Section 34)**
- ❖ The partner declared an insolvent; he ceases to be a partner on the date on which the order of adjudication is made.

- ❖ The firm is dissolved on the date of the order of insolvency unless the contract specifies something else.
- ❖ The estate of the insolvent is not liable for any act of the firm after the date of the order of insolvency.
- ❖ The firm cannot be held liable for any acts of the insolvent partner after the date of the order of insolvency.

5. Effect of notice to an acting partner of the firm

According to **Section 24** of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

6. Personal Profit earned by Partners (**Section 16** of the Indian Partnership Act, 1932)

According to **section 16**, subject to contract between the partners:

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

7. Revocation of continuing guarantee (**Section 38** of the Indian Partnership Act, 1932)

According to **section 38**, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

8. Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. **Section 14** of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

9. Liability of a partner for acts of the firm (**Section 25** of the Indian Partnership Act, 1932): Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under **Section 25**, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (**Sections 26 & 27** of the Indian Partnership Act, 1932): Where, -

by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

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

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

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

11. Liability of Firm for Misapplication by Partners (**Section 27** of Indian Partnership Act, 1932): Where-

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of **section 27**:

It may be observed that the workings of the two clauses of **Section 27** are designed

to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.

12. According to **section 16** of Indian Partnership Act, 1932, subject to contract between the partners, -
- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
 - (b) If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given question, A, B, C & D established partnership business for refining sugar. A, who was himself a wholesale grocer, was entrusted with the work of selection and purchase of sugar. As a wholesale grocer, A was well aware of the variations in the sugar market and had the suitable sense of propriety as regards purchases of sugar. He had already in stock sugar purchased at a low price which he sold to the firm when it was in need of some, without informing the partners that the sugar sold had belonged to him. A has made personal profit.

Therefore, A is bound to account to the firm for the profit so made by him

13. According to **section 33** of Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
- (i) The power of expulsion must have existed in a contract between the partners;
 - (ii) The power has been exercised by a majority of the partners; and
 - (iii) It has been exercised in good faith.

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

In the given question, spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C.

Thus, according to the test of good faith as required under **Section 33**, expulsion of Partner B is not valid.

14. According to **section 37** of Indian Partnership Act, 1932, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the given question, A is entitled to three-eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or settling accounts with his estate.

Therefore, A's official receiver is entitled to three-eighths of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.

15. A partner can be expelled from the firm only after satisfying the conditions as laid down in **Section 33** of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:
- the power of expulsion must have existed in a contract between the partners;
 - the power has been exercised by a majority of the partners; and
 - It has been exercised in good faith.

The test of good faith includes:

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

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

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

In the given question, P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without

notifying to the Registrar of firms about the changes in the constitution of the firm. Death of a partner is not to be notified to the Registrar and public notice of retirement is to be given by the retired partner himself. So, the firm has not committed any offence by not informing Registrar.

Hence, the suit in the name of firm is maintainable.

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

- (i) Ram's estate in this case is liable for the price of the Machinery purchased as the transaction happened when he was alive.
- (ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. But the amount can be recovered from the Official Receiver of the insolvent persons as the transaction happened while they were solvent. A suit for goods sold and delivered would lie against the representative of the deceased partner. This is because there was debt due in respect of the goods in Ram's life time.

18. According to **Section 20** of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.

Any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows above the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

Now, referring to the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role. M also is not aware that he is dealing with a partner in a firm. Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm.

But in the second situation, if M was having knowledge about the agreement, he cannot recover money from the firm.

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

In the given question, Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners,

Therefore, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

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

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

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

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

21. **Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):**

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

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

- (i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.

- (ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:
 - (a) the power of expulsion must have existed in a contract between the partners;
 - (b) the power has been exercised by a majority of the partners; and
 - (c) it has been exercised in good faith.

22. As per the provisions of **Section 30(5)** of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.

However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in **Section 30(7)** are as follows:

- (A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
 - (i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
 - (ii) In the light of the provisions of **Section 30(7)** read with **Section 30(5)** of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

23. As per **Section 29** of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- To interfere with the conduct of the business.

- To require accounts.
- To inspect books of the firm.

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

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

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

25. A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per [section 28](#) of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

26. Rights of outgoing partner to carry on competing business ([Section 36](#) of the Indian Partnership Act, 1932)

- (1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not, -

- (a) use the firm name,
- (b) represent himself as carrying on the business of the firm or
- (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co after following above conditions in the absence of any agreement.

- (2) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

UNIT - 3: DISSOLUTION OF FIRM

1. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

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

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
 - (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
 - (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
 - (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) completion of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
 - (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
 - (f) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) wilful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.
2. A partner may file a suit for dissolution of the firm on anyone of the following grounds, and the court may dissolve the firm if it is satisfied about the same (Section 44):
 1. **Insanity of a partner:**

Sometimes, a partner becomes insane i.e., of unsound mind. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become insane. The suit may also be filed by the next friend (i.e., legal representative) of the insane partner.

2. **Permanent incapacity of a partner:**

Sometimes, a partner becomes permanently incapable of performing his duties. In such cases also, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become incapable.

3. **Misconduct of a partner:**

Where a partner is guilty of misconduct, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who is guilty of misconduct.

4. **Persistent breach of agreement:**

Sometimes, a partner willfully or persistently (i.e., frequently) commits a breach of agreements relating to the management of the affairs of the firm, or conducts the partnership business in such a way that the other partners find it difficult to carry on the partnership business with him. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who commits the breach of agreements. Keeping erroneous accounts and not entering receipts, continuing quarrelling between the partners, refusal to meet on matters of business, taking away books of the firm, and misappropriations of income etc., are held to be sufficient ground for dissolution of a firm.

5. **Transfer of interest:**

Where a partner transfers the whole of his interest or share to a third party, the court may allow the dissolution of the firm. The court may also allow the dissolution when the entire share of a partner is attached or sold by an order of the court. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has transferred his interest or share.

6. **Perpetual losses in business:**

Where the business of a firm cannot be carried on, except at a loss, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partner. When the court is satisfied that the business of a firm cannot be carried on, except at a loss, it may pass an order of dissolution of the firm.

7. **Other just and equitable grounds:**

A firm may also be dissolved by the court on any 'other just and equitable ground'. A 'just and equitable ground', is a ground which is fair and reasonable according to the opinion of the court.

(i) Deadlock in the management.

(ii) Where the partners are not in talking terms between them.

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

3. DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

4. As per provisions of Indian Partnership Act, 1932, on dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.

In the given question, X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution.

Therefore, X & Y both shall be liable for the amount because no public notice was given.



PART D - QUESTION PAPER FOR SELF-PRACTICE

(TOTAL: 40 Marks)

- Q.1 (a) A, B and C are partners in a firm carrying on money lending business. D, a customer, deposits his jewellery with the firm for safe custody. A and B sell this jewellery and misappropriate the money. C, being a sleeping partner, has no knowledge about this sale. Now, D files a suit against all the three partners. Can C be held liable? Give reasons. (5 marks)
- (b) Ratan Tata, a retired businessman of repute, assumed the honorary presidentship of the business of XYZ & Associates, a partnership firm, carrying on the business of trading in steel pipes, on the request of the partners. Mr. Warren Buffet lent a sum of 50,00,000 to the firm, relying on Ratan Tata's Association with the firm. Later the firm defaulted in repayment of the loan. Warren Buffet decides to sue Ratan Tata & the other partners. Comment on the validity of his decision in the context of the provisions of the Indian Partnership Act, 1932. (5 marks)
- (c) What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration? (5 marks)
- Q.2 (a) Anand and Ravi are carrying on business in partnership. In the partnership deed it is provided that neither of the partners should borrow money except with the consent of both. Anand borrowed a sum of Rs. 10,000 from Suresh for the business of the firm without the consent of Ravi. Is the firm liable? Give reasons for your answer. (4 marks)
- (b) What are the various grounds under the Indian Partnership Act, 1932, on which the Court may, at the suit of the partner, dissolve a firm? (6 marks)
- Q.3 (a) X, Y & Z carry on business in partnership business as merchants trading between Mumbai & London. Weaton, a merchant in London to whom they sent their consignments secretly allows share of commission which he received upon such consignments in consideration of Z using his influence to obtain consignments for him. Is Z liable to account to the firm the monies so received by him? (5 marks)
- (b) ABC & Associates, an unregistered firm purchased some goods worth ₹ 2000 from 'R' in whose favor a cheque was issued which was dishonoured. At the same time the firm sold some other goods to 'R' amounting to ₹ 1200. Later 'R' sued the firm for recovery of ₹ 2000. The firm contended that since 'R' owed ₹1200 to the firm, the said amount should be adjusted against the

claim of ₹ 2000. Is R's suit maintainable against the firm? Further, comment on the validity of the contention made by the firm. (5 marks)

(c) Distinguish between Partnership and Joint Hindu Family Firm

(5 marks)

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4. THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

ICAI MODULE, RTP & MOCK TEST, PAST EXAM PAPER QUESTIONS

1. Examine the concept of LLP. (ICAI Module, May'19 ICAI RTP)
2. Enumerate the various characteristics of the LLP. (ICAI Module, May'19 ICAI RTP)
3. What do you mean by Designated Partner? Whether it is mandatory to appoint Designated Partner in a LLP?
(ICAI Module, Nov'19 ICAI Mock Test, Nov'20 RTP, May'21 RTP)
4. What are the effects of registration of LLP? (ICAI Module, Nov'19 ICAI RTP)
5. Enumerate the circumstances in which LLP may be wound up by Tribunal.
(ICAI Module, May'20 ICAI RTP, Jan'21- 5 Marks, May'21 Mock Test)
6. State the essential elements to incorporate a LLP?
(ICAI Module, May'18- 5 Marks, Nov'18 ICAI RTP, Nov'18- 5 Marks)
7. Differentiate between a LLP and a partnership firm? (Nov'18 ICAI RTP)
8. Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? (Nov'19 ICAI RTP)
9. Differentiate between the Limited Liability Partnership (LLP) and Limited Liability Company. (May'19 ICAI Mock Test, May'21 Mock Test)
10. State the meaning of Limited Liability Partnership (LLP). What are the relevant steps to incorporate LLP? (May'19 ICAI Mock Test)
11. What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008? (May'20 ICAI RTP)
12. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.
(ICAI Module, May'19 - 5 Marks)

13. Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. (Nov'19- 5 Marks)
14. State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (Nov'20- 5 Marks)

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ANSWERS

1. **Meaning** – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of “limited liability partnership”

- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner’s wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is called a hybrid between a company and a partnership.

2. LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:
- Body Corporate
 - Perpetual Succession
 - Separate legal entity
 - Mutual Agency
 - LLP Agreement
 - Artificial Legal person
 - Common Seal
 - Limited liability
 - Management of business
 - Minimum and maximum number of members
 - Business for profit only
 - Investigation
 - Compromise or Arrangement

- Conversion into LLP
- E-filing of documents
- Foreign LLP

3. **Designated Partner [Section 2(j)]:** “Designated partner” means any partner designated as such pursuant to **section 7**.

According to **section 7** of the LLP Act, 2008:

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) Resident in India: For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

4. **Effect of registration (Section 14):**

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.

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

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

6. **Essential elements to incorporate LLP** - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- (vii) LLP Name.

7. **Distinction between LLP and Partnership Firm:** The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Aact, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	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.

6.	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 it existence continues	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	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.
8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	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.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing documents	LLP is required to file: (a) Annual statement of accounts (b) Statement of solvency (c) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a

15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the Benefits of the partnership with the prior consent of the existing partners.
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8. **Partners (Section 5 of Limited Liability Partnership Act, 2008):** Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

- (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.

9. **Distinction between LLP and Limited Liability Company (LLC)**

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	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.
3.	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).
4.	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”
5.	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 on the members.

6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	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 shareholders.
8.	Minimum number of directors/ partners	Minimum 2 partners.	Private Co. - 2 directors Public Co. - 3 directors

10. **Meaning:** A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Steps to incorporate LLP:

Step 1: LLP Name

➤ **Name (Section 15):**

- a) Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.
- b) LLP shall not be registered by a name which, in the opinion of the Central Government is—
 - a) undesirable; or
 - b) identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

➤ **Reservation of name (Section 16):**

- a) A person has to apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as the name of a proposed LLP; or
- b) Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied, **reserve the name for a period of 3 months** from the date of intimation by the Registrar.

Step 2: Incorporation Document (Section 11)**1) For a LLP to be incorporated:**

- a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
- c) Statement to be filed:
 - ❖ Along with the incorporation document, a statement in the prescribed form shall also be filed,
 - ❖ made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
 - ❖ by anyone who subscribed his name to the incorporation document,
 - ❖ that all the requirements of this Act and the rules made there under have been complied with,
 - ❖ in respect of incorporation and matters related to it.

2) The incorporation document shall—

- a) be in a form as may be prescribed;
- b) state the name of the LLP;
- c) state the proposed business of the LLP;
- d) state the address of the registered office of the LLP;
- e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
- f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
- g) contain such other information concerning the proposed LLP as may be prescribed.

3) If a person makes a statement as discussed above which he knows to be false; or shall be punishable

- ❖ with imprisonment for a term which may extend to 2 years and
- ❖ with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

Step 3: Incorporation Registration (Section 12)

- 1) When the requirements imposed by **Section 11** have been complied with, the Registrar shall retain the incorporation document & accept the statement as mentioned above and, he shall, within a period of 14 days—
 - a) register the incorporation document; and
 - b) give a certificate that the LLP is incorporated by the name specified therein.

- 2) The certificate issued shall be signed by the Registrar and authenticated by his official seal.
- 3) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Step 4: Effect of registration (Section 14)

On registration, a limited liability partnership 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.

Step 5: LLP Agreement (Section 23)

1. Unless otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
2. The LLP agreement, made therein shall be filed with the Registrar in e-Form 3 within 30 days of incorporation of LLP and accompanied by such fees as may be prescribed.
3. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

11. 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, 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.
- (2) (i) 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.

- (ii) 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.

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

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

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

13. **Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]**

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

- (a) the partner in fact has no authority to act for the LLP in doing a particular act; and
- (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

14. As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -

- with intent to defraud creditors of the LLP,
- or any other person, or
- for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

**QUESTION PAPER FOR SELF-PRACTICE**

(TOTAL: 25 marks)

- Q.1. What is the procedure for application of name and change of name of LLP? (5 marks)
- Q.2. When does a person cease to be a partner in LLP? What are the effects of cessation of partnership interest? (5 marks)
- Q.3. What are the requirements with respect to Books of Account, Statement of Solvency & Annual return for LLP? (5 marks)
- Q.4. What is the procedure for conversion of a firm/private company /unlisted company into LLP? (5 marks)
- Q.5. What are the circumstances when LLP can be wound up? (5 marks)

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5. THE COMPANIES ACT, 2013

ICAI MODULE, RTP & MOCK TEST, PAST EXAM PAPER QUESTIONS

1. What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.
(ICAI Module, May'19 ICAI Mock Test)
2. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?
(ICAI Module, May'19 ICAI RTP, May'19- 6 Marks, Jan'21- 6 Marks)
3. Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?
(ICAI Module, Nov'18 ICAI RTP, May'20 ICAI RTP)
4. 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'.
(ICAI Module, Nov'19 ICAI RTP, May'18 - 3 Marks, Nov'20 RTP, Nov'20- 6 Marks, May'21 Mock Test)
5. 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?
(May'18- 6 Marks, Nov'18 ICAI RTP, Nov'19 ICAI Mock Test)
6. 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.(ICAI Module, Nov'18 ICAI RTP, May'20 ICAI RTP)
7. Examine with reasons whether the following statement is correct or incorrect:
 - (i) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

(ii) Affixing of Common seal on company's documents is compulsory.

(May'19 ICAI Mock Test)

8. 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. (Nov'18 - 6 Marks)
9. "The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association. (Nov'19- 6 Marks)
10. F, 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 F as a pretended loan. This way, F 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? (ICAI Module, May'19 ICAI RTP, May'19 ICAI Mock Test, Nov'19- 3 Marks, May'21 Mock Test)
11. The paid-up Share Capital of AVS Private Limited is ₹1 crore, consisting of 8 lacs equity shares of ₹10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3lacs Equity Shares and 150,000 Equity Shares respectively in AVS Private Limited. XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited. With reference to the provisions of the Companies Act, 2013, examine whether AVS Private Limited is a subsidiary of TSR Private Limited? (May'19- 3 Marks)
12. The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer.
13. 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? (Nov'18 ICAI RTP)

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

(a)	Directors and their relatives	190
(b)	Employees	15
(c)	Ex-Employees (Shares were allotted when they were employees)	10
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e)	Others	5

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

(May'19 ICAI RTP, May'19 ICAI Mock Test, Nov'20 – 4 Marks, May'21 Mock Test)

15. 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. (Nov'19 ICAI RTP)

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

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

(Nov'18 – 3 Marks, May'19 ICAI Mock Test, Nov'19 ICAI Mock Test, May'21 Mock Test)

17. A company registered under section 8 of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2019 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. (Nov'18- 4 Marks, Nov'19 ICAI Mock Test)

18. Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
- If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
 - If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?
- (ICAI Module, May'20 ICAI RTP)
19. 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?
- (ICAI Module, Nov'19 - 4 Marks, Nov'20 RTP, May'21 RTP)
20. 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?
- (ICAI Module, May'19 - 4 Marks)
21. Ravi Private Limited has borrowed Rs. 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt state the remedy if any available to Mudra Finance Ltd.?
- (May'18 - 4 marks)
22. SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.
- (Nov'20- 3 Marks, May'21 RTP)

23. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores and issued Non-Convertible Debentures worth ₹ 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹ 100 Crores and Non-Convertible Debentures stands at ₹ 120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?
(Jan'21- 4 Marks, May'21 RTP)
24. Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis., on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?
(Jan'21- 3 Marks)
25. Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a **section 8** company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?
(May'21 Mock Test)



PART C - ANSWERS

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. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

2. Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

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

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

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

3. Doctrine of Ultra Vires

- The meaning of the term 'ultra vires' is 'beyond the powers' of. Anything which is outside the specified objects and powers of the object clause of memorandum of association is ultra vires the company and therefore is null and void.
- An act which is ultra vires memorandum, the company cannot ratify even by the unanimous consent of all the shareholders.
- No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it.
- Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.
- But, an act which is ultra vires the powers of directors, but intra vires (i.e. within the powers) Memorandum can be ratified by the members of the company through a resolution passed at a general meeting.
- Similarly if an act is ultra vires the Articles but intravires Memorandum, can be ratified by altering the Articles by a Special Resolution at a general meeting.
- In *Ashbury Railway Carriage and Iron Company Limited v. Riche*, it was held by the Court that the contract was null and void. It said that the terms '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.

4. Doctrine of Indoor Management

- While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the PROVISIONS of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly.
- The doctrine of indoor management, thus, imposes an important restriction on the scope of doctrine of constructive "notice. While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.
- **Case Law: *The Royal British Bank vs. Turquand***
Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was Incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed

by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

➤ **Exceptions:** The doctrine of indoor management is subject to the following exceptions or limitations:-

1. **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.
2. **Suspicion of Irregularity:** Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or nothing the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority.

3. **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.

5. One Person Company:

Definition: As per Section 2(62), one person company is a company which-

One Person Company' means a company which has only one person as a member.

- Only one person as member.
- Minimum paid up capital - no limit prescribed.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen and whether resident in India or otherwise (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under **section 8** of the Act. Though, it may be converted to private or public companies in certain cases.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- ~~OPC can voluntarily convert into any kind of company after two years have expired from the date of incorporation,~~
But if, the paid up share capital is increased beyond 50 lakh rupees-
Or
Its average annual turnover during immediately **preceding 3 consecutive financial years** exceeds 2 crore rupee,
then it ceases to be OPC and it has to compulsorily convert itself into a private or public company.

6.

- (a) **A company being an artificial person cannot own property and cannot sue or be sued**
Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything

which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

- (b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

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

7.

- (i) **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.
- (ii) **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.

8. Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

Lifting of Corporate Veil

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court

may be willing to crack the corporate shell

- Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- Where the device of incorporation is adopted for some illegal or improper purpose: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

9. The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
 - It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
- A memorandum is a public document under **Section 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

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

Contents of the memorandum: The memorandum of a company shall state—

- (a) the name of the company (Name Clause) with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company. This clause is not applicable on the companies formed under **section 8** of the Act.
- (b) the State in which the registered office of the company (Registered Office clause) is to be situated;
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause);
- (d) the liability of members of the company (Liability clause), whether limited or unlimited

- (e) the amount of authorized capital (Capital Clause) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
 - (f) the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.
10. As per provisions of The Companies Act, 2013, courts can lift the corporate veil if companies are formed to divide income and avoid tax or avoid any welfare laws. As per the case of Sir Dinshaw Maneckjee Petit, he had formed four private companies, in all of which he was the majority shareholder. The companies made investments and whenever interest and dividend income were received by the companies, D applied to the companies for loans, which were immediately granted and he never repaid. In a legal proceeding the corporate veil of all the companies were lifted and the income of the companies treated as if they were of 'D'.
- (a) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.
 - (b) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on 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.
11. As per **Section 2(87)** provides that a company shall be a subsidiary of another, if any of the following conditions are satisfied :-
- (a) that other controls the composition of its Board of Directors;
 - (b) that other exercises or-controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies; or
 - (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary majority of equity shares in AVS Pvt Ltd. and both these companies are subsidiaries of TSR Pvt Ltd it will have a majority stake in the composition of the Board of Directors of AVS Pvt Ltd. Hence, TSR Pvt, Ltd will be treated as the holding company of AVS Pvt Ltd.

12. In terms of **section 4(1)(c)** of the Companies Act, 2013, the powers of the company are limited to:
- Powers expressly given in the “Objects Clause” of the Memorandum (which is popularly known as ‘express’ power), or conferred by the Companies Act, or by any other statute and
 - Powers reasonably incidental or necessary to the company’s main objects (termed as “Implied’ powers).

The Act further provides that the acts beyond the powers of a company are ultra vires and void and cannot be ratified even though every member of the company may give his consent [Ashbury Railway Carriage Company Vs Richie]

The objects clause enables the shareholders, creditors or others to know what its powers are and what the range of its activities is. The objects clause therefore is of fundamental importance to the shareholders, creditors and every other person who deals with the company in any manner what so ever. A company being an artificial legal person can act only within the ambit of the powers conferred upon it by the Memorandum through the “Objects Clause”.

Every person who enters into a contractual relationship with a company on any matter is presumed to be aware of its objects and is supposed to have examined the Memorandum of Articles of the company to ensure proper contractual agreement. If a person fails to do so, it is entirely at his own peril.

It is also pertinent to note that the objects of a company may be changed by following the provisions for the change of Memorandum as laid out in **section 13** of the said Act.

M/s LSR Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. J. Such act cannot be treated as being within either the ‘express’ or ‘implied’ powers of the company. Mr J who entered into partnership is deemed to be aware of the lack of powers of M/s LSR (Pvt) Ltd. In the light of the above, Mr, J cannot enforce the agreement or liability against M/s LSR Pvt. Ltd under the Companies Act. Mr. J should be advised accordingly. However, under the Indian Contract Act, 1872 where a person derives any benefit either in the absence of a contract or under a void agreement will be liable to make are reasonable payment for the value of such benefit.

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

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

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.

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

14. According to **section 2(68)** of the Companies Act, 2013, “Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to 200.

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

It is further provided that -

- persons who are in the employment of the company; and
- persons who, having been in the employment of the company in the past and they are still members of the company

shall not be included in the number of members.

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

Therefore, following is the calculation of number of members as per above provisions.

(a)	Directors and their relatives -	190
(b)	Employees - not to be counted	0
(c)	Ex-Employees (Shares were allotted when they were employees) - not to be counted	0
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)- To be counted as 5	5
(e)	Others	5
	GRAND TOTAL	200

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

15. **Corporate Veil:** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded

from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (i) To determine the character of the company i.e. to find out whether co-enemy or friend
- (ii) To protect revenue/tax
- (iii) To avoid a legal obligation
- (iv) Formation of subsidiaries to act as agents
- (v) Company formed for fraud/improper conduct or to defeat law

In the given question, if the situation falls in above case, then the veil can be lifted and the promoters can be made personally liable for the debts of the company.

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

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

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

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

17. **Section 8** of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in
- promoting its objects and
 - prohibiting the payment of any dividend to its members.
- Hence, a company that is registered under **section 8** of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.
- In the present case, the company in question is a **section 8** company and hence it cannot declare dividend. Thus, the contention of members is incorrect.
18. (A) ~~Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.~~
- (B) ~~Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.~~
19. ~~As per the provisions the Companies Act, 2013, an OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of its incorporation; except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. 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.~~
20. **Doctrine of Indoor Management**
- According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.
- Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.
- The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents

submitted with the Registrar of Companies.

Thus,

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

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

21. As per the facts given, Ravi Private Limited borrowed ₹ 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

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

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

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

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

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

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

In the instant case, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of ₹ 100 each. 200,000 equity shares are held by Central government

and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, SK Infrastructure Limited is a Government company.

23. As per **Section 2(6)** of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term “Total Share Capital”, means the aggregate of the -

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹ 15 crore, which is less than requisite control of 20% of total share capital (i.e. 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

24. **Foreign Company [Section 2(42) of the Companies Act, 2013]:** It means any company or body corporate incorporated outside India which—
- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (ii) conducts any business activity in India in any other manner.

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

25. **Section 8** of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. **Section 8** companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a **Section 8** company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:
- (i) 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.

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

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

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



QUESTION PAPER FOR SELF-PRACTICE

(TOTAL: 30 marks)

- Q.1.** (a) The Articles of a company required that all deeds etc. should be signed by the M.D., the Secretary and an Executive Director on behalf of the company. A deed of mortgage was signed by the Managing Director on behalf of the company in favour of Z. Can it be a valid deed? (4 marks)
- (b) Write short note on: (4 marks)
- (i) Private Company
 - (ii) Small Company

- (c) Abbey Limited was registered as a public company. There are 260 members in the company as noted below:

(a)	Directors and their relatives	190
(b)	Employees	25
(c)	Ex-Employees (Shares were allotted when they were employees)	15
(d)	10 couples holding shares jointly in the name of husband and wife (10*2)	20
(e)	Others	10

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. (4 marks)

- Q.2.** (a) Define OPC (One Person Company) and state the rules regarding its membership. (6 marks)
- (b) A company registered under **section 8** of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2019 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. (6 marks)
- (c) Briefly explain the doctrine of “ultra vires” under the Companies Act, 2013. What are the consequences of ultra vires acts of the company? (6 marks)

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ANSWERS FOR SELF-PRACTICE QUESTION PAPERS

1. THE INDIAN CONTRACT ACT, 1872

Q.1. (a) Obligations may arise from different sources. The law of contract deals only with such legal obligations which arise from agreements. Obligations which are not contractual in nature are outside the purview of the law of contract. For example, obligation to observe traffic rules does not fall within the scope of the contract Act.

The other sources of obligations are: obligations under the trust law or the law of tort or the fundamental duties under the constitution etc. they are outside the purview of the contract law since they are not voluntarily created through an agreement. The law of contracts is not the whole law of agreements, nor is the whole law of obligation. It is the law of those agreements which create obligations and those obligations, which have their source in agreements.

(b) As per provisions of The Indian Contract Act, 1872, general offer is an offer made to public in general. Anybody knowing about the offer can accept such offer. No written acceptance is compulsory. Any person coming forward, acting accordingly can accept the offer.

In *Carlill v/s Carbolic & Smoke Balls Co.*, a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could cure influenza issued an advertisement for sale of this medicine. The advertisement also included a reward of £100 to any person who contracted influenza, after using the medicine. Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. It was held that Mrs. Carlill was entitled to a reward of £100 as she had fulfilled the condition for acceptance as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same.

The given question is similar to the above case law.

Hence, Miss Rakhi can claim the reward, since the advertisement here is in the form of a general offer

(c) As per provisions of The Indian Contract Act, 1872, 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. It can be below market value.

In the given question, Mr. X was in need of money & offered to sell his casio to Z for ₹ 6000. Z refused to buy the same at the stated price. X gradually reduced

the quoted price until ₹ 2000 was reached, which Z accepted. Before the casio was delivered, X received an offer from Mr. A for the purchase of his casio for ₹ 4500 and X refused to carry out his contract with Z on the grounds that the consideration was inadequate. Based on above provisions, Consideration may or may not be adequate. Thus inadequacy of the consideration has no effect on the validity of the contract.

Hence, Mr. X is liable under the contract to Mr. Z.

Q.2. (a) As per provisions of The Indian Contract Act, 1872, Generally stranger to contract cannot sue. However in certain exceptional cases such as in case of contract for marriage settlement, partition of property of family arrangements, the beneficiaries under the contract are entitled to use and enforce the contract. In the given question, R & S two brothers entered into a contract for the division of the family property between them and agreed to contribute 20000 each, per month towards the maintenance of their mother. Hence, the mother is entitled to sue on the contract and enforce her rights against R & S.

(b) As per provisions of The Indian Contract Act, 1872, the term 'misrepresentation' may be defined as an innocent misstatement of facts which are material for the contract. In other words, misrepresentation is a false representation which is made innocently. Person making the statement does believes it as true. The effect of misrepresentation is that it makes the contract voidable at the option of the party whose consent was obtained by misrepresentation.

In the given question, A, honestly believing that his watch is made in Switzerland agreed to sell it to B by representing that the watch is made in Switzerland. Subsequently, it is discovered that the watch is made in India. Hence, the contract is made on the grounds of misrepresentation. The contract is voidable on the grounds of misrepresentation, since untrue statement was made by A, in honest ignorance of its falsehood and therefore the only remedy available to B is to rescind the contract; no damages shall be granted.

However if A, knew that the watch was actually made in India, it will amount to fraud and the contract shall be not only voidable at the option of B but damages shall also be awarded to him for his loss.

(c) As per provisions of The Indian Contract Act, 1872, agreements resulting the creation of monopoly: Such agreements are treated as opposed to public policy, illegal, and void ab initio.

In the given question, X and Y were running two organizations trading in wheat of 'Popular Brand' in Uttar Pradesh. X realized that the wheat business is

high yielding. To expand his business X offered Y a sum of Rs.10 Lakhs on the condition that Y shall not sell "Popular Brand" Wheat in Uttar Pradesh. X failed in making the promised payment to Y.

Thus in the given case the contract between X & Y is opposed to public policy & illegal, since it results in the creation of monopoly. The suit is not maintainable.

- Q.3. (a) Essentials of a valid offer; the special terms & conditions must also be communicated alongwith the offer so as to bind the offeree. If the special terms & conditions are not communicated the same shall not be binding on the offeree. Further the party prescribing such special terms must make reasonable efforts to bring such special terms to the knowledge of the other party at the time of formation of contract.

Thus in this case X shall be entitled to compensation for his loss from the shipping company, despite the special term exempting the company from itsliability since there was no indication on the face of the ticket to draw X's attention to the special terms printed on the back of the ticket. The company has failed to make reasonable efforts to communicate the special terms at the time of formation of contract as a consequence of which X is not bound by such term and company's contention is not tenable.

- (b) Restraints imposed under service Agreements are valid and enforceable provided they are reasonable. A clause in a service agreement whereby an employee is prohibited from accepting any other engagement during his employment is valid and is not regarded as in restraint of trade. . In the given case Mrs. Seth has enlisted (hired) the services of Mr. X a legal expert who agrees not to take up the brief of Mr. Raman during the course of litigation.

Thus the agreement is valid & enforceable since the restriction imposed on Mr. X does not amount to restraint of trade. Mr. X can recover the amount from Mr. Seth.

- (c) As per provisions of The Indian Contract Act, 1872, the exemplary damages are claim with the intention of punishing the party in default. As a general rule, the exemplary damaged are not awarded for the breach of contract as they are punitive in nature. However, in following two cases, the court may award exemplary damages:

- (i) Where there is a breach of a promise to marry.
- (ii) Where a banker wrongfully dishonors customer s cheque, e.g., dishonor of customer's cheque when the banker has sufficient funds to the credit of the customer. In such cases, the damages are awarded taking into consideration the loss to the prestige and goodwill of the customer. The general rule, in this connection is, the smaller the amount of cheque the greater is the

insult, and thus greater the amount of damages.

In the given question, A bank wrongfully dishonoured a cheque of 1,000 belonging to Dhanna Seth (a Millionaire). He says that his credit has come down to the level of Mofatlal (a person having only a few thousand rupees) as his cheque of 1000 has been dishonoured wrongfully by the bank.

Hence, Dhanna Seth can claim exemplary damages from the bank for wrongful dishonour of cheque. The smaller the amount of the cheque dishonoured the greater shall be the value of damages in this case.

- Q.4. (a) According to the provisions of **Section 56** of The Indian Contract Act, 1872, a contract stands discharged on account of supervening impossibility if after the formation of the contract but before its performance some event takes place which renders the performance of the contract impossible. In such a case both the parties stand discharged from their respective obligations and the contract becomes void subsequently.

However in certain instances, such as those following, the contract is not discharged and is treated as subsisting and if the parties fail to perform the contract it shall amount to breach:

Case (a) Usually failure to perform on account of strikes by workers, does not amount to discharge by supervening impossibility, unless a contract to the contrary is expressly made.

Thus in the given case when X fails to supply chemical on account of strike by workers, the contract is not discharged on account of supervening impossibility. The failure to supply the chemical amounts to breach and therefore X shall be bound to pay damages of Rs. 40,000 ($12,000 - 8,000 = 4,000 \times 10$) to Y

Case (b) further, commercial hardships also do not result in discharge of contract on the grounds of supervening impossibility. Failure to perform the contract on the grounds that the contract has become less profitable or unprofitable due to changes in the prices, shall not amount to discharge by supervening impossibility. Instead failure to perform in such a case amounts to breach of contract and the defaulting party shall be bound to compensate the aggrieved party for the loss sustained by him.

Thus in the given case when X informs Y about his failure to perform on the grounds of increase in price of chemical it amounts to breach and X shall be bound to pay Rs. 20,000 ($10,000 - 8,000 = 2,000 \times 10$) as damages to Y

Case (c) When a contracting party, before the due date of performance, refuses to perform the contract, it amounts to anticipatory breach of contract. In such a case the contract is voidable at the option of the aggrieved party. The aggrieved party has the option to rescind the contract immediately without waiting for the due date of performance and sue for damages. Conversely the aggrieved

party can choose to continue with the contract and wait for the performance up to the due date and inform of his intention of doing so the defaulting party. In such a case the contract shall be treated as subsisting between them. Now if any event takes place during the waiting time period which renders the performance impossible then the contract stands discharged on the grounds of supervening impossibility.

Thus in the given case when Y decides to wait for the performance up to 20th October and the entire chemical in the factory is destroyed on 19th October, then the contract stands discharged on the grounds of supervening impossibility and Y now loses his right to claim any damages from X.

- (b) As per the provisions of The Indian Contract Act, 1872, where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. 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.

In the given question, A agreed to sell rice to B. Both A and B believed that the rice is old /Basmati and a very high price is settled. Subsequently, it is discovered that rice is new one. It is a case of bilateral mistake.

Hence, The contract is void on the grounds of bilateral mistake as to the quality of subject matter; B is entitled to get back his price. However if B is alone mistaken as to the quality of subject matter, it amounts to unilateral mistake, and the contract shall be treated as valid and enforceable.

- (c) As per the provisions of The Indian Contract Act, 1872, consideration can even proceed from a stranger to contract. When the promisee for consideration receives & accepts the same, from a third party i.e. a person other than the promisor, then it shall discharge the promisor from his obligation to furnish the consideration irrespective of the fact whether the promisor has authorized or ratified the act of the third party or not.

Thus A is discharged from his obligation to pay ₹ 60,000 and is now liable to B only for ₹ 40,000. A shall however be bound to compensate C for his past voluntary payment which was the legal obligation of A.

- Q.5. (a) A contract is created the moment an offer, made with the intention of creating legal relations, is accepted. However acceptance to be valid and binding must be communicated. Thus efforts must be made to bring the acceptance into the knowledge of the offeror, i.e. acceptance must be put into a course of transmission to the offeror by offeree.

In case of written communication merely writing the word 'accepted' or 'approved' on a draft agreement would not amount to acceptance for the purpose of

creation of contract unless efforts are taken to bring such acceptance into knowledge of the offeror.

Thus in the given case no contract comes into existence even when the manager writes 'approved' on the draft agreement since no steps were taken to communicate the same.

(b) **Doctrine Of Privity Of Contracts**

The rule is "Stranger to contract cannot sue. But a stranger to a consideration can sue".

Exception to Rule" A stranger to a contract cannot sue":

Under the Indian Law, the following are the exceptions to the rule that a stranger to a contract cannot sue.

(1) Beneficiaries in the case of trust:

An agreement to create a trust can be enforced by the beneficiary, though he was not a party to the contract between the settlor and the trustees.

(2) Written family settlements:

In the case of family settlement, if the terms of settlement are reduced in writing, members of the family who were not a party to the settlement can also enforce their claim.

(3) Partition of Hindu Undivided Family:

In the case of certain marriage contracts a female member can enforce a provision for marriage expense based on a petition made by the Hindu undivided family.

(4) Assignment of contract:

Where there is an assignment of a contract, the assignee can enforce the contract for various benefits that would accrue to him on account of the assignment.

(5) Acknowledgement of Debts:

In case of part performance of a contractual obligations or where there is acknowledgment of liability on account of estoppel, a third party can sue for benefits.

(6) Covenants with land:

Where a piece of land which is sold to buyer with certain covenants relating to land and the buyer is kept on notice of the covenants with certain duties, there the successors to the seller can enforce these covenants.

(7) Contracts made by the 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.

- (c) (i) No, there is no sale because the display of the article at the shop window is only an invitation to offer and not an offer [invitation to an

offer does not result in generation of acceptance, instead gives rise to an offer

- (ii) He shall be bound by them whether he has read them or not [if special terms and conditions are communicated alongwith the offer, then the same shall be binding on offeree]

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2. THE SALE OF GOODS ACT, 1930

- Q.1. (a) The given question is related to condition as to fitness & quality for buyer's purpose.. As per The Sale of Goods Act, 1930, condition as to fitness & quality for buyer's purpose. This implied condition applies to a contract only when - (i) the purpose of buyer's purchase is known to the seller, (ii) when the buyer relies on seller's skill & judgment & (iii) Seller deals in the goods in his usual course of business. Here, seller is responsible for bad goods.

In the given question, for the purpose of making uniform for the employees, Mr. Yadav brought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots carriage lining. since the buyer - Mr. Yadav, has not communicated to the seller - Vivek, the purpose of purchasing the cloth, therefore the implied condition as to quality & fitness of the cloth for buyer's purpose does not apply & hence Mr. Yadav is not entitled to any remedy against Vivek, under the Sale of Goods Act, 1930.

- (b) '**Caveat Emptor**' is a Latin expression which means "let the buyer beware".

The Doctrine states generally seller is not responsible for bad goods.

This Doctrine takes the side of the seller.

As per the rule, seller is not responsible in following cases:-

- (i) To know the particular purpose of buyer.
- (ii) If buyer chooses the goods negligently
- (iii) If the goods are defective and the defect is patent (i.e. defect which can be discovered by mere inspection)

Exceptions: The exceptions to the doctrine of Caveat Emptor; which are mentioned below (i.e. in the following seller is responsible) :

1. Where the buyer specifies the particular purpose for which the goods are required to the seller.

Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.

2. Where buyer relies on the seller's skill or judgment.
3. Where there is contract of sale by sample, the rule of caveat emptor will not apply if the goods do not correspond with sample
4. Where goods are bought by description, the goods shall correspond with the description.

5. If the goods are bought both by sample as well as by description this rule will not apply if goods do not correspond with both sample and description.
 6. There is an implied condition that the goods shall be of merchantable quality
 7. When the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.
 8. When the goods are purchased under some brand name.
- (c) In case of specific goods the property in goods shall pass on the formation of contract only if the goods are:
- (i) Specific
 - (ii) Goods are in a deliverable state i.e. the seller has done, all that he is required to do, to put the goods in such a state that the buyer shall be bound to take the delivery of the same
 - (iii) The contract of sale is unconditional.

If the seller is bound to do something in respect of the goods to put them into a deliverable state and he has yet not done the same, then the property in goods shall pass on to the buyer in the future, when the seller does what he is required to do and brings the same to the knowledge of the buyer.

In the given case the seller A was required to conduct repairs in respect of die machine before B buys the same. Thus the passage of property intends to: take place when the repairs are conducted by A and B has the knowledge of the same. Since the machine is destroyed before repairs could be completed, the passage of property has not taken place. The risk of loss vests with A and therefore he cannot recover the price from B.

- Q.2. (a) Right of stoppage in transit can be exercised by an unpaid seller for the recovery of price on the fulfilment of the following conditions:
1. The buyer must have become insolvent
 2. The goods must be in transit
 3. And the right must be exercised for the recovery of price.

Further goods are said to be in transit when they are out of the possession of the seller but not yet into buyer's possession of the buyer. However if the carrier acknowledges to the buyer (then the transit is deemed to have come to an end. In the given case the transporter M/s Deep acknowledges to the buyer Jay that the goods are at Jay's risk. This results in termination of transit and hence the right to stoppage in transit cannot be exercised even if Jay subsequently becomes insolvent and has not taken delivery of the goods.

Thus Ashu, the unpaid seller cannot exercise stoppage in transit.

(b) Sale and Agreement to sell

SALE	AGREEMENT TO SELL
1. Transfer of property: the property in goods passes from the seller to the buyer immediately	1. Transfer of property: In agreement to sell, the ownership of the property will pass from the seller to the buyer at some future time or on fulfilment of some conditions.
2. Nature of contract: A sale is an executed contract	2. Nature of contract: An agreement to sell is an executory contract
3. Consequences of Breach by buyer : In a sale, if the buyer fails to pay for the goods, the seller can: iii. Sue him for recovery of price iv. Claim damages	3. Consequences of Breach by buyer : In an agreement to sell, the seller can only sue for damages for breach of contract
4. Consequences of Breach by seller : In a sale, if the seller defaults, i.e. commits a breach, the buyer can: 3. Claim goods from third party 4. Sue for damages	4. Consequences of Breach by seller: In the case of an agreement to sell, if the seller commits a breach, the buyer can only claim damages.
5. Transfer of risk: In a sale, if the goods are destroyed, the loss falls on the buyer even though they are in the possession of the seller.	5. Transfer of risk: In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though they are in the possession of the buyer.
6. Subsequent destruction: A subsequent loss or destruction of the goods is the liability of the buyer.	6. Subsequent destruction: Such loss or destruction is the liability of the seller.
7. Nature of rights: Creates Jus in rem	7. Nature of rights: Creates Jus in personam

Q.3. (a) Implied Warranties:

It is a warranty, which the law implies into the contract of sale. The law presumes that the parties have incorporated it into their contract.

The implied warranties are read into every contract of sale unless they are expressly excluded by the parties.

Following are the implied warranties which are contained in the Sale of Goods Act:

1. **Warranty as to undisturbed possession [Section 14(b)]:**
 - ❖ Where the buyer has obtained the possession of the goods, he has a right to enjoy them in a way he likes, i.e., no one should interfere with the quiet enjoyment of the buyer.
 - ❖ If buyer's right of possession and enjoyment is disturbed by anyone, then the buyer can recover damages from the seller.
2. **Warranty as to free from encumbrance [Section 14(c)]:**
 - ❖ In every contract of sale there is an implied warranty that the goods sold shall be free from any charge.
 - ❖ If the possession of the buyer is disturbed due to such charge in favor of third party, he can claim damages from the seller.
3. **Disclosure of dangerous nature of goods:**
 - ❖ There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.
 - ❖ If there is breach of this warranty, the seller will be liable in damages.
4. **Warranties quality or fitness by usage of trade [Section 16(3)]:**
 - ❖ Like implied conditions, implied warranties are also attached by custom or usage of trade. This is so because the parties enter into an agreement subject to the known customs or usages of trade.

(b) **Essential elements of a valid contract of sale**

Following are the essential elements of a valid contract of sale:

1. **All the requirements of a valid contract must be fulfilled:**
A contract of sale must fulfil all the requirements of a valid contract, e.g., free consent, consideration, competency of the parties, lawful object and consideration. If any of the essential elements of a valid contract is missing then the contract of sale will not be valid.
2. **There must be two parties to the contract of sale:**
There must be two parties, one seller and the other buyer. The reason for the same is that in a contract of sale, the ownership of the goods has to pass from one person to another.
3. **There must be some goods as a subject-matter:**
The 'goods' as defined in **Section 2 (7)** of the Sale of Goods Act.
4. **The property in the goods must be transferred to the buyer:**
The term 'property' in the goods means the ownership of the goods. In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. The term 'property' here means the general property, i.e., all ownership rights of the goods, and not merely a

special property, i.e., limited rights such as right of a Pawnee.

5. There must be some price for the goods:

The goods must be sold for some price. The term 'price' is defined in **Section 2 (10)**

6. A contract of sale can be **absolute** or **conditional** [**Section 4(2)**].

(c) **Goods** [**Section 2(7)**]:

"Goods" means every kind of movable property

other than actionable claims and money; and

includes stocks and shares,

growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Classification of Goods:

1) **EXISTING GOODS** are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller at the time of contract of sale (**Section 6**).

The existing goods may be of following kinds:

- a. **Specific goods** means goods identified and agreed upon at the time a contract of sale is made [**Section 2(14)**].
- b. **Ascertained Goods** are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but in actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.' When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.
- c. **Unascertained goods** are the goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description.

2) **FUTURE GOODS** means goods to be manufactured or produced or acquired by the seller after making the contract of sale [**Section 2 (6)**].

A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a man cannot transfer what is not in existence.

3) **CONTINGENT GOODS:** The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods' [**Section 6(2)**].

Contingent goods also operate as 'an agreement to sell' and not a 'sale' as far as the question of passing of property to the buyer is concerned. In other words, like the future goods, in the case of contingent goods also, the property does not pass to the buyer at the time of making the contract.

3. THE INDIAN PARTNERSHIP ACT, 1932

- Q.1. (a) According to the provisions of the Indian Partnership Act, 1932, a sleeping or a dormant partner shall have the same liabilities as the active partners, even though he does not take part in the conduct of business of partnership firm. Thus a dormant partner shall be liable for the acts of the firm to the third parties.

In the given case, A, B, the other partners of the firm have misappropriated the jewellery received by them from their customer D, in the ordinary course of conduct of business of the firm.

Thus applying the above stated provisions, D is rightfully entitled to sue all the three partners, including Mr. C, the dormant partners, irrespective of the fact that he had no knowledge of such misappropriation.

- (b) Partner by Holding out; When a person by his express words or conduct represents himself to be a partner in the firm, where in fact he is not as such a partner then if a third party on the faith of such representation contracts with the alleged firm, then such a person shall be held liable as partner by holding out to such a third party.

In the given case Ratan Tata assumes (he honorary presidentship of XYZ & Associates and thereby, his conduct, represents himself as a partner in the said firm. Warren Buffet lends a sum of ₹ 50,00,000 relying on this representation.

Therefore applying the above stated provisions it can be concluded that Ratan Tata will be regarded as a Partner by Holding out despite holding honorary presidentship and shall be held liable along with the other partners by Warren Buffet. Thus the action actions of Warren Buffet are legal & valid under the provision of the Indian Partnership Act, 1932.

- (c) **Procedure for registration (Section 58):**

6. **Step 1** - Obtain a statement in the form from the office of the Registrar.

7. **Step 2** - State the following information:

- Name of the firm
- Principal place of the firm
- Name of the other places where the firm carries its business
- Date when each partner joined
- Name in full and permanent address of each partner
- Duration of the firm.

8. Step 3 - Get the statement of duly verified and signed by all the partners or their agents.
9. Step 4 - File the statement along with prescribed fees
10. Step 5 - Obtain a certificate or registration from the Registrar.

Consequences of non-registration (Section 69):

1. The partners cannot file a suit against the firm or other partners:

A partner of an unregistered firm cannot file a suit against the firm or his other present or past partners, for the enforcement of any right arising from a contract or conferred by the Indian Partnership Act.

2. The firm cannot file a suit against third parties:

An unregistered firm cannot file a suit against any third party for the enforcement of any right arising from some contract.

3. The partner of the firm cannot claim a set-off:

The term 'set-off' means the adjustment of debts by one party due to him from the other party who files a suit against him. The partners of an unregistered firm or the firm itself cannot claim a set-off, in a suit filed against them or the firm. But the right of set-off is not affected if the claim for set-off does not exceed Rs 100 in value.

- Q.2. (a) According to the provisions of the Indian Partnership Act, 1932, a firm shall be bound by the acts of a partner done within the scope of his implied authority provided the following conditions are satisfied:
- The act must be done in the name of the firm
 - The act must be performed by a partner of the firm in the capacity of partner acting within the scope of his apparent authority
 - The act must relate to the ordinary course of business of the firm
 - The act must be done in the usual way.
- If an act is so performed then it shall be binding on the firm. Further if the act falls beyond the scope of the partner's real authority, on account of restrictions imposed on his authority by virtue of the partnership deed, the act shall be binding on the firm, provided the third party had no knowledge of the restrictions & had acted in a bonafide manner.
- Thus in the give case firm shall be liable for the amount borrowed by Anand from Suresh for the business of the firm even though the deed expressly provides for the exercise of borrowing power only with the consent of both the partners, provided Suresh had no knowledge of the terms of the deed in this respect.
- (b) A partner may file a suit for dissolution of the firm on anyone of the following grounds, and the court may dissolve the firm if it is satisfied about the same (Section 44):

1. **Insanity of a partner:**
Sometimes, a partner becomes insane i.e., of unsound mind. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become insane.
2. **Permanent incapacity of a partner:**
Sometimes, a partner becomes permanently incapable of performing his duties. In such cases also, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become incapable.
3. **Misconduct of a partner:**
Where a partner is guilty of misconduct, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who is guilty of misconduct.
4. **Persistent breach of agreement:**
Sometimes, a partner willfully or persistently (i.e., frequently) commits a breach of agreements relating to the management of the affairs of the firm, or conducts the partnership business in such a way that the other partners find it difficult to carry on the partnership business with him. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who commits the breach of agreements.
5. **Transfer of interest:**
Where a partner transfers the whole of his interest or share to a third party, the court may allow the dissolution of the firm. The court may also allow the dissolution when the entire share of a partner is attached or sold by an order of the court. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has transferred his interest or share.
6. **Perpetual losses in business:**
Where the business of a firm cannot be carried on, except at a loss, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partner. When the court is satisfied that the business of a firm cannot be carried on, except at a loss, it may pass an order of dissolution of the firm.
7. **Other just and equitable grounds:**
A firm may also be dissolved by the court on any 'other just and equitable ground'. A 'just and equitable ground', is a ground which is fair and reasonable according to the opinion of the court.

- Q.3.** (a) Duty of the partner to account for any secret profits earned by him in the course of conduct of the business of the firm by virtue of the use of the property or name or connections of the firm.

In the given question, X, Y & Z carry on business in partnership business as merchants trading between Mumbai & London. Weaton, a merchant in London to whom they sent their consignments secretly allows share of commission which he received upon such consignments in consideration of Z using his influence to obtain consignments for him. It is his duty to disclose the same and account for it.

Thus here Z shall be liable to account for the share of commission that he receives from Weaton during the course of conduct of the business of the firm.

- (b) The right of a third party to file a suit against an unregistered firm remains unaffected. The partners of an unregistered firm or the firm itself cannot claim a set-off, in a suit filed against them or the firm. But the right of set-off is not affected if the claim for set-off does not exceed Rs 100 in value.

In the given question, ABC & Associates, an unregistered firm purchased some goods worth ₹ 2000 from 'R' in whose favour a cheque was issued which was dishonoured. At the same time the firm sold some other goods to 'R' amounting to ₹ 1200. Later 'R' sued some the firm for recovery of ₹ 2000. The firm contended that since 'R' owned ₹1200 to the firm, the said amount should be adjusted against the claim of ₹ 2000.

Therefore, after applying the above provisions, the suit filed by R against the firm is maintainable. An unregistered firm cannot claim a set-off exceeding ₹ 100. Therefore the contention of the firm lo set-off ₹ 1200 shall not be held valid. Only a set-off of ₹ 100 shall be permissible.

- (c) Distinction between Partnership and Joint Hindu Family firm

Partnership	HUF
1. It arises from agreement	1. It arises by status.
2. Governed by Indian Partnership Act, 1932.	2. It is governed by Hindu Law.
3. Maximum partners can be 50.	3. No such limit is applicable here.
4. A person can be admitted by the consent of the other existing partners.	4. A male/ female person becomes a member merely by his birth.
5. A minor can be admitted only to the benefits of the firm.	5. A male/female minor becomes a member merely by his birth.

6. Each partner is implied authority to bind the firm for the actions done by him in the daily course of business.	6. Only Karta has such authority.
7. Unlimited liability.	7. Karta's liability is unlimited and the coparcener's liability is limited to their share in the family property
8. Each partner has the right to ask for the books of accounts and also for the profits and losses.	8. The coparceners have no such right
9. In case of death of a partner, partnership is dissolved unless otherwise agreed.	9. HUF continues to operate even after death of a coparcener.

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4. THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

1. Every Limited Liability Partnership 'shall have either the words Limited Liability Partnership' or the acronym 'LLP' as the last words of its name. Further no LLP shall be registered by a name which in the opinion of the Central Government is undesirable or identical to or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trademark or a trademark which is subject of an application for registration of any other person under the Trade Marks Act, 1999.

[Section 15]

Application for reservation of name - A person may apply in the prescribed form & with the prescribed fees to the Registrar for reservation of name. The application should be made after due consideration of requirements of **section 15** and must state the name of the proposed LLP or the name to which the existing LLP proposes to change its name in the application. Upon satisfaction, the Registrar may subject to the rules prescribed by the Central Government in the matter, reserve the name for a period of 3 months from the date of intimation by the Registrar.

Change of name: Where the Central Government is satisfied that a LLP has been registered (where through inadvertence or otherwise and whether originally or by a change of name) under a name which is in violation of the provisions of **section 15** as mentioned above, the Central Government may direct such LLP to change its name. 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.

2. A person may cease to be a partner of LLP in the following instances-
 - (i) in accordance with an agreement with the other partners or
 - (ii) in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner or
 - (iii) on his death or dissolution of LLP or
 - (iv) if he is declared to be of unsound mind by a competent court or
 - (v) if he has applied to be adjudged as an insolvent or has been declared as an insolvent.

Where a person has ceased to be a partner of a LLP, then such a person shall be regarded as still being a partner of the LLP, in relation to any other person dealing with the LLP unless - such a person has notice that the said partner has ceased to be a partner of LLP or a notice that former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

The cessation of a partner from LLP does not by itself discharge the partner from any

obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

Where a partner of a LLP ceases to be partner, the former partner or his legal representatives shall be entitled to receive from the LLP - an amount equal to capital contribution by the former partner and his share in the accumulated net profits of the LLP.

3. **Books of Account** - The LLP shall maintain such proper books of accounts as may be prescribed, relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting. Such books of accounts shall be maintained at the registered office of LLP for such period as may be prescribed. The accounts of LLP shall be audited as per rules prescribed.

Statement of solvency - Every LLP shall within a period of 6 months from the end of each financial year, prepare a Statement of Account & Solvency for the said financial year as at the last day of the said financial year. The statement shall be in such form as may be prescribed and shall be signed by the designated partners of the LLP.

Every LLP shall file the Statement of Account & Solvency with the Registrar within the prescribed time, every year in such form and manner & accompanied by such fees as may be prescribed.

If any LLP fails to comply with the requirements with respect to Books of Accounts or Statement of account & Solvency, then LLP shall be punishable with fine of minimum ₹ 25,000 but which may extend to ₹5 lakhs & every designated partner shall be punishable with fine of minimum ₹ 10,000 but which may extend to ₹ 1 lakh.

Annual Return - Every LLP shall be required to file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fees as may be prescribed. In the event of non-compliance, LLP shall be punishable with fine of minimum ₹25,000 but which may extend to ₹ 5 lakhs and designated partner shall be punishable with fine of minimum ₹ 10,000 but which may extend to ₹ 1 lakh.

4. A firm may convert into LLP by complying with the provision of Second Schedule of the Limited Liability Partnership Act, 2008. Whereas a private company and an unlisted public company can be converted into LLP after complying with the provisions of Third Schedule & Fourth Schedule respectively.
 - The Registrar may on being duly satisfied that a firm, a private company or an unlisted public company, as the case may be, has complied with the requirements of the respectively applicable Schedules and rules made thereunder, register the documents submitted for registration of such conversion. The Registrar shall issue a certificate of registration in such form as the Registrar may determine, stating that the LLP is on and from the date specified in the certificate, registered

under this Act.

- The LLP shall within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered about the fact of conversion.
- On the registration of conversion of firm/private company/unlisted public company into LLP, the partners or members of the erstwhile firm/ private company/unlisted public company, as the case may be, shall be regarded as the partners of LLP. Further all the assets & liabilities of the erstwhile entity shall be transferred to and vest in the LLP.

The former firm or company as the case may be shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as may be applicable.

5. The winding of LLP can be initiated either voluntarily or by the Tribunal.

A LLP may be wound up by the Tribunal in any of the following instances:

- (i) The LLP decides that it be wound up by Tribunal
- (ii) There are less than 2 partners in the LLP for a period of more than 6 months
- (iii) The LLP is not in a position to repay its debts
- (iv) The LLP has acted against the interests of the sovereignty and integrity of India
- (v) The LLP has defaulted in filing with the Registrar, the Statement of Account & Solvency or the Annual Return for any 5 consecutive financial years or
- (vi) The tribunal is of the opinion that winding up of LLP is just and equitable.

5. THE COMPANIES ACT, 2013

Q.1. (a) Doctrine of Constructive Notice

The Companies Act, 2013 provides that **any person can inspect** by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company, on payment of prescribed fees.

The memorandum and articles of association of a company when registered with Registrar of Companies become public documents, and they are available for inspection to any person, on the payment of nominal fees. Whether a person reads them or not, it **will be presumed that he knows the contents of the documents**. Hence, every person dealing with the company is under an obligation to know the contents of these documents.

Thus, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the memorandum, he cannot acquire any rights under the contract against the company.

The Articles require the deed to be signed by 3 persons. Z should have consulted the Articles of Association of the company to ascertain the authority of signing the deed. Even if, the M.D. has signed it in good faith, the deed is still not valid. Z can't claim on the basis of the deed. The concept is that since the Articles is a public document, on being filed with the ROC, Z is presumed to have known its provisions.

(b) (i) Private Company:

As per **Section 2(68)**, private company is a company which by its articles,—

- (i) Restricts the right to transfer its shares;
- (ii) Limits the number of its members to **200** (except in case of One Person Company):

The clause provides that **where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:**

However following **shall not be included** in the number of members:

- persons who are in the employment of the company; and
- persons who, having been in the employment of the company in the past and they are still members of the company
- (iii) Prohibits any invitation to the public to subscribe for any securities of the company.

There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. **A private company should have at**

least two directors. The name of a private limited company must end with the words “Private Limited”.

(ii) **Small Company:**

Definition: As per **Section 2(85)**, small company means a company, other than a public company, -

(i) paid-up share capital of which **does not exceed 2 crore rupees** or such higher amount as may be prescribed which shall not be more than ten crore rupees;

And

(ii) turnover of which as per its last profit and loss account **does not exceed 20 crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to-

- (i) a holding company or a subsidiary company;
- (ii) a company registered under **section 8**; or
- (iii) a company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.

(c) According to **section 2(68)** of the Companies Act, 2013, “Private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to 200.

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

It is further provided that -

- persons who are in the employment of the company; and
- persons who, having been in the employment of the company in the past and they are still members of the company

shall not be included in the number of members.

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

Therefore, following is the calculation of number of members as per above provisions.

(a)	Directors and their relatives -	190
(b)	Employees - not to be counted	0
(c)	Ex-Employees (Shares were allotted when they were employees) - not to be counted	0
(d)	10 couples holding shares jointly in the name of husband and wife (10*2)- To be counted as 10	10
(e)	Others	10
	GRAND TOTAL	210

Since the total is above 200, the number of members should be reduced.

Q.2. (a) One Person Company:

Definition: As per **Section 2(62)**- One Person Company' means a company which has only one person as a member.

- ◆ Only one person as member.
- ◆ Minimum paid up capital - no limit prescribed.
- ◆ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ◆ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- ◆ Such other person may be given the right to withdraw his consent.
- ◆ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ◆ Only a natural person who is an Indian citizen and whether resident in India or otherwise (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- ◆ A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

- (b) **Section 8** of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

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

Hence, a company that is registered under **section 8** of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.

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

(c) Doctrine of Ultra Vires

- The meaning of the term 'ultra vires' is 'beyond the powers' of. Anything which is outside the specified objects and powers of the object clause of memorandum of association is ultra vires the company and therefore is null and void.
- An act which is ultra vires memorandum, the company cannot ratify even by the unanimous consent of all the shareholders.
- No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it.
- Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.
- But, an act which is ultra vires the powers of directors, but intra vires (i.e. within the powers) Memorandum can be ratified by the members of the company through a resolution passed at a general meeting.
- Similarly if an act is ultra vires the Articles but intravires Memorandum, can be ratified by altering the Articles by a Special Resolution at a general meeting.
- Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).
The facts of the case are:
The main objects of a company were:
 - (a) To make, sell or lend on hire, railway carriages and wagons;
 - (b) To carry on the business of mechanical engineers and general contractors.
 - (c) To purchase, lease, sell and work mines.
 - (d) To purchase and sell as merchants or agents, coal, timber, metals etc.

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. The company however, repudiated the contract as being ultra-vires. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of shareholders.

However, it was held by the Court that the contract was null and void. It said that the terms '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.

MAY 2018 PAPER

Roll No:

Total No. of Printed Pages : 2

Total no. of Questions :

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

IMPORTANT INSTRUCTIONS TO CANDIDATES

Questions in Section A are to be answered in the medium opted by the candidate. If a candidate has not opted for Hindi medium, his/her answers in Hindi, will not be evaluated. Questions in Section B, are to be answered in English only, by all the candidates, including those who have opted for Hindi medium.

Answers to both the sections are to be written in the same answer book.

Section A – (60 marks)**Question No. 1 is compulsory.****Answer any FOUR questions from the remaining FIVE questions.**

Those any candidate answers extra question(s) sub – question (s) over and above the required number, then only the requisite number of questions first answered in the book shall be valued and subsequent extra question(s) answered shall be ignored.

1. (a) X, Y and Z are partners in a firm. They jointly promised to pay Rs. 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. (4 marks)
- (b) Ravi Private Limited has borrowed Rs. 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt state the remedy if any available to Mudra Finance Ltd.? (4 marks)
- (c) What is meant by delivery of goods under the Sale of Goods Act, 1930; State various modes of delivery. (4 marks)
2. (a) State the exception to the rule “An agreement without consideration is void”. (5 marks)
- (b) What are the essential elements to form a LLP in India as per that LLP Act, 2008? (5 marks)
- (c) (i) Distinguish between wagering agreement and contract of insurance. (2 marks)

OR

- (ii) Examine with reason that the given statement is correct or incorrect “Minor

- is liable to pay for the necessaries supplied to him". (2 marks)
3. (a) Distinguish between dissolution of firm and dissolution of partnership. (2 marks)
- (b) What are the consequences of Non – Registration of a partnership Firm? Discuss. (4 marks)
- (c) 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 delivery 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 which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (6 marks)
4. (a) What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. (6 marks)
- (b) X, Y and Z are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstance? (6 marks)
5. (a) Mr. D sold some goods to Mr. E for Rs. 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per The Sale of Goods Act, 1930. (6 marks)
- (b) 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? (6 marks)
6. (a) Define Fraud whether “mere silence will amount to fraud” as per the Indian contract Act, 1872? (5 marks)
- (b) What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties. (4 marks)
- (c) State the limitations of the doctrine of indoor management under the Companies Act, 2013. (3 marks)

SUGGESTED ANSWERS BY ICAI FOR MAY 2018 PAPER

Ans.1.

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

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.

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

- (b) As per the facts given, Ravi Private Limited borrowed ₹ 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

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

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

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

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

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

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

- (i) Actual delivery: When the goods are physically delivered to the buyer.
- (ii) Constructive delivery: When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.
- (iii) Symbolic delivery: When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

Ans.2.

- (a) The general rule is that an agreement made without consideration is void (**Section 25** of the Indian Contract Act, 1872). However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made even without consideration, will be valid and enforceable.
1. Natural Love and Affection: Any written and registered agreement made on account of love and affection between the parties standing in near relationship to each other.
 2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.
 3. Promise to pay time barred debt: A promise in writing signed by the person making it or by his authorized agent, made to pay a debt barred by limitation.
 4. Agency: According to **Section 185** of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
 5. Completed gift: In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to **Section 25** states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
 6. Bailment: No consideration is required to effect the contract of bailment (**Section 148**).
 7. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid .
- (b) Essential elements to incorporate LLP- Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:
- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
 - (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];

- (iii) To have registered office in India to which all communications will be made and received;
- (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- (vii) LLP Name.

(c) (i) Distinction between Wagering Agreement and Contract of Insurance

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

OR

- (ii) Minor is liable to pay for the necessaries supplied to him: This statement is incorrect. The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by **section 68** of the Indian Contract Act, 1872. A claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.

Ans.3.

(a) DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

(b) Consequences of Non-Registration of a Partnership Firm [**Section 69** of the Indian Partnership Act, 1932]: Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) No relief to partners for set-off of claim: If an action is brought against the firm

by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

- (iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

- (c) **Section 73** of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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

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

Ans.4.

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

The essentials regarding appropriation of unascertained goods are:

- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality stated in the contract.

- (c) The goods must be in a deliverable state.
 - (d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
 - (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
 - (f) The assent may be express or implied.
 - (g) The assent may be given either before or after appropriation.
- (b) A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
- (i) the power of expulsion must have existed in a contract between the partners;
 - (ii) the power has been exercised by a majority of the partners; and
 - (iii) it has been exercised in good faith.

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

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

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

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

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

Ans.5.

- (a) Position of Mr. D: Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to **section 45(1)** of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:
- (i) Suit for price (**Section 55**)
In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
 - (ii) Suit for damages for non-acceptance (**Section 56**): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept

and pay for the goods. As regards measure of damages, **Section 73** of the Indian Contract Act, 1872 applies.

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

(b) One Person Company (OPC) [**Section 2(62)** of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen 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)-
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

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. 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.

Ans.6.

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

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

(b) Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

- (i) Parties have not retained any record of terms and conditions of partnership.
- (ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
- (iii) No account of the partnership was opened with any bank
- (iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

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

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

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

J.K. SHAH[®]
CLASSES

NOV 18 PAPER

Roll No:

Total No. of Printed Pages :3

Total no. of Questions : 11

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

Questions in Section A are to be answered in the medium opted by the candidate has not opted for Hindi medium, his/her answers in Hindi, will not be checked.

Questions in Section B. are to be answered in English only, by all the including those who have opted for Hindi medium.

Answers to both the Sections are to be written in the same answer book.

SECTION - A**Question No. 1 is compulsory.****Answer any four questions from the remaining five questions.**

1. (a) Mr. X and Mr. Y entered into a contract on 1st August, 2018. by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract
The mode of transportation available between their places is roadways only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr Y did not agree. On 1st September, 2018. Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract On the other hand, Mr.Y claimed for refund of ₹ 50,000. which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's corneal. (4 Marks)
- (b) A company registered under Section 8 of the Companies Act, 2013, financial year ended on 31st March, earned huge profits during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company.
Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly. (4 Marks)

- (c) Differentiate between Ascertained and Unascertained Goods with example. (4 Marks)
2. (a) What is Contingent Contract ? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. (7 Marks)
- (b) Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. (5 Marks)
3. (a) Though a minor cannot be a partner U, a firm, he can nonetheless be admitted to the benefits of partnership.”
- (I) Referring to the provisions of the Indian Partnership Act, 1932, state the right which can be enjoyed by a minor partner. (4 Marks)
- (II) A. State the liabilities of a minor partner both : (2 Marks)
- (i) Before attaining majority .
- (ii) After attaining majority.
- OR
- B. State the legal position of a minor partner after attaining majority: (2 Marks)
- (i) When he opts to become a partner of the same firm.
- (ii) When he decide not to become a partner.
- (b)
- (i) 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 he husband to make a written agreement if he really loved her. Mr. Ramesh mage a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pat the specified amount to his wife Mr. 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. (3 Marks)
- (ii) A shop keeper displayed a pair of dress in the show room and a price tag of ₹ 2,000 was attached to the dress. Mrs. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to received the payment and pack up the dress. The shop-keeper refused to hand – over the dress to Mrs. Lovely in consideration of the price stated in the price tag attached to the dress. Mrs. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 Marks)
4. (a) What is the Doctrine of “Caveat Emptor”? What are the exceptions to the Doctrine of “Caveat Emptor”? (6 Marks)
- (b)
- (i) Mr. A, Mr. B and Mr. C were partners in a partnership firm ABC & Co., which

is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letterheads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹ 20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyse the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr X. (3 Marks)

- (ii) Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement.

After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (3 Marks)

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

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

- (b) 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. (6 Marks)
6. (a) Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 Marks)
- (b) State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (Marks)
- (c) 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. (3 Marks)

SUGGESTED ANSWERS BY ICAI FOR NOV 2018 PAPER**Ans.1.**

- (a) Subsequent or Supervening impossibility (Becomes impossible after entering into contract): When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.

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

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

- (b) A company that is registered under **section 8** of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.

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

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

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

Ans.2.

- (a) According to **section 31** of the Indian Contract Act, 1872, contingent contract means a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

- (a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
- (b) The event referred to, is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
- (c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
- (d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

- (b) Essential elements to incorporate Limited Liability Partnership (LLP)- Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:
 - (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
 - (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
 - (iii) To have registered office in India to which all communications will be made and received;
 - (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
 - (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
 - (vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
 - (vii) LLP Name.

Steps to incorporate LLP:

1. Name reservation:
 - The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
 - Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.
2. Incorporate LLP:
 - After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).

- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners

3. 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.

Ans.3.

(a) (I) Rights which can be enjoyed by a minor partner:

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

(II) A. (i) Liabilities of a minor partner before attaining majority:

- (a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- (b) Minor has no personal liability for the debts of the firm incurred during his minority.
- (c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.

(ii) Liabilities of a minor partner after attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

OR

- B. (i) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time,

his rights and liabilities as given in **Section 30(7)** of the Indian Partnership Act, 1932, are as follows:

- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
 - (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
- (ii) When he elects not to become a partner:
- (a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
 - (b) His share shall not be liable for any acts of the firm done after the date of the notice.
 - (c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.
- (b) (i) Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.
- In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. 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.
- (ii) The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.
- 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.

Ans. 4.

(a) Caveat Emptor

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

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

1. Fitness as to quality or use: Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sales of Goods Act, 1930].
2. Goods purchased under patent or brand name: In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. Goods of Merchantable Quality: Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. Sale by sample: Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. Goods by sample as well as description: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
7. Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
8. Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same

could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

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

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

- (ii) A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per **section 28** of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Ans. 5.

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

custody of the goods.

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

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

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:
 - (a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]
 - (b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

- (b) Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

Lifting of Corporate Veil

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- Trading with enemy: If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil

- may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- Where the device of incorporation is adopted for some illegal or improper purpose: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Ans.6.**(a) Modes of revocation of Offer**

- (i) By notice of revocation
- (ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- (iii) By non-fulfillment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- (iv) 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.
- (v) By counter offer
- (vi) By the non- acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality

(b) Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932):

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

- (1) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.
- (2) Permanent incapacity: When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (3) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (4) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably

practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

- (5) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (6) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (7) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.
 - (iv) Gambling by a partner on a stock exchange.

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

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

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

MAY 2019 PAPER

Roll No:

Total No. of Printed Pages : 2

Total no. of Questions :

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

IMPORTANT INSTRUCTIONS TO CANDIDATES

Questions in Section A are to be answered in the medium opted by the candidate. If a candidate has not opted for Hindi medium, his/her answers in Hindi, will not be evaluated.

Questions in Section B, are to be answered in English only, by all the candidates, including those who have opted for Hindi medium.

Answers to both the sections are to be written in the same answer book.

Section A – (60 marks)**Question No. 1 is compulsory.****Answer any FOUR questions from the remaining FIVE questions.**

Those any candidate answers extra question(s) sub – question (s) over and above the required number, then only the requisite number of questions first answered in the book shall be valued and subsequent extra question(s) answered shall be ignored.

Question 1.

- (a) 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 wife. 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? **(4 Marks)**

- (b) 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? (4 Marks)

- (c) Discuss the various types of implied warranties as per the Sales of Goods Act, 1930? (4 Marks)

Question 2

- (a) “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? (7 Marks)
- (b) “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain. (5 Marks)

Question 3

- (a) (i) What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? (2 Marks)

OR

- (ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? (2 Marks)
- (b) “Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm.” Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? (4 Marks)

- (c) Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former’s portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father’s profession yet?

Discuss in light of the Indian Contract Act, 1872?

- (i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father? (6 Marks)

Question 4

- (a) “A non-owner can convey better title to the bonafide purchaser of goods for value.” Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930? (6 Marks)
- (b) M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.
- (i) Examine whether action by the partners was justified or not?
- (ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (6 Marks)

Question 5

- (a) M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.
- Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.
- The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The: carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.
- The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.
- (i) Explain the duty of the buyer as well as the seller according to the doctrine of “Caveat Emptor”.
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (6 Marks)
- (b) 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. (6 Marks)

Question 6

- (a) Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. (5 Marks)
- (b) “Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration.” Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief? (4 Marks)
- (c) Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as subsidiary company of Popular products. Ltd., if it controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer. (3 Marks)

SUGGESTED ANSWERS BY ICAI FOR MAY 2019 PAPER

Ans.1.

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

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

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

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

- (b) Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

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

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

(c) Various types of implied warranties

1. Warranty as to undisturbed possession [Section 14(b) of the Sales of Goods Act, 1930]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
4. Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Ans.2.

(a) Mere silence is not fraud

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

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the

whole information in his possession affecting the subject matter of the contract. The rule is contained in explanation to **Section 17** of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Silence is fraud:

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

Following contracts come within this category:

- (a) Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.
- (b) Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.
- (c) Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.
- (d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.
- (e) Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

2. Where the silence itself is equivalent to speech: 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.

- (b) LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

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

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Ans.3.

- (a) (i) Effect of notice to an acting partner of the firm
According to **Section 24** of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

OR

- (ii) Personal Profit earned by Partners (**Section 16** of the Indian Partnership Act, 1932)

According to **section 16**, subject to contract between the partners:

- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- (b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.
- (b) Mode of determining existence of partnership (**Section 6** of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
For determining the existence of partnership, it must be proved.
1. There was an agreement between all the persons concerned
 2. The agreement was to share the profits of a business and
 3. the business was carried on by all or any of them acting for all.
1. Agreement: Partnership is created by agreement and not by status (**Section 5**). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.
 2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet

whether the relation does or does not exist must depend upon the whole contract between the parties.

3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

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

- (i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.
- (ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

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

Ans.4

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

- (1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).
- (2) Sale by one of the joint owners (Section 28): If one of several joint owners of

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

- (3) Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
- (4) Sale by one who has already sold the goods but continues in possession thereof: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]
- (5) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].
- (6) Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
- (7) Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].
- (8) Sale under the provisions of other Acts:
 - (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872].
 - (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

(b) Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a majority of partners except in exercise,

in good faith, of powers conferred by contract between the partners.

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

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

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

- (i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.
- (ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:
- (a) the power of expulsion must have existed in a contract between the partners;
 - (b) the power has been exercised by a majority of the partners; and
 - (c) it has been exercised in good faith.

Ans.5.

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

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

1. Fitness as to quality or use
 2. Goods purchased under patent or brand name
 3. Goods sold by description
 4. Goods of Merchantable Quality
 5. Sale by sample
 6. Goods by sample as well as description
 7. Trade usage
 8. Seller actively conceals a defect or is guilty of fraud
- (ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as

are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

- (b) Formation of companies with charitable purpose etc. (Section 8 company):
Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

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

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

Power of Central government to issue the license–

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

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

Ans.6.

- (a) 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.

- (b) Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, under **Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows:

- (i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded

from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

(c) In the present case, the total share capital of Popular Products Ltd. is ₹ 20 crores comprised of 12 Lakh equity shares and 8 Lakhs preference shares.

Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd. which amounts to less than one-half of its total share capital. Hence, Jovial Ltd. by virtue of shareholding is not a holding company of Popular Products Ltd.

Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company. [Section 2(87) of the Companies Act, 2013]

J.K. SHAH
CLASSES

NOV 2019 PAPER

Roll No:

Total No. of Printed Pages : 2

Total no. of Questions :

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

IMPORTANT INSTRUCTIONS TO CANDIDATES

Questions in Section A are to be answered in the medium opted by the candidate. If a candidate has not opted for Hindi medium, his/her answers in Hindi, will not be evaluated. Questions in Section B, are to be answered in English only, by all the candidates, including those who have opted for Hindi medium.

Answers to both the sections are to be written in the same answer book.

Section A – (60 marks)**Question No. 1 is compulsory.****Answer any FOUR questions from the remaining FIVE questions.**

Those any candidate answers extra question(s) sub – question (s) over and above the required number, then only the requisite number of questions first answered in the book shall be valued and subsequent extra question(s) answered shall be ignored.

1. (a) X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can X recover it from the Manager?
(4 Marks)
- (b) 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 Rs. 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?
(4 Marks)
- (c) State the various essential elements involved in the sale of unascertained goods and its appropriation as per the sale of Goods Act, 1930
(4 Marks)
2. (a) Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872?
(7 Marks)
- (b) Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.
(5 Marks)

3. (a) (i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? (2 Marks)
- (ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? (2 Marks)
- (b) With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner? (4 Marks)
- (c) Mr. Sonumal a wealthy individual provided a loan of Rs. 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan Rs. 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1,00,000 on 28.02.2019 and remaining Rs. 50,000 on 03.03.2019.
- On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that lender should adjust Rs. 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019
- Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.
- Now you decide:
- (i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act 1872?
- (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- (iii) What would the mode of adjustment / appropriation of such part payment in case neither MR. Sonumal nor Mr. Datumal insist any order of adjustment on their part? (6 Marks)
4. (a) What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (6 Marks)
- (b) Master X was introduced to the benefits of partnership of M/s ABC & Co. with the constant of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.
- In the light of the Indian Partnership Act, 1932, explain:
- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X? (6 Marks)

5. (a) Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The shopkeeper quoted the price of the same as Rs. 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.
- The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot
- The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short gains.
- The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.
- Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?
- Explain the basic law on sale by sample under Sale of Goods Act 1930?
- Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of sale of Goods Act 1930?
- What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? (6 Marks)
- (b) “The Memorandum of Association is a charter of a company”. Discuss Also explain in brief the contents of Memorandum of Association. (6 Marks)
6. (a) Explain the term ‘Coercion’ and what are the effects of coercion under Indian Contract Act, 1872. (5 Marks)
- (b) “Dissolution of a firm is different from dissolution of Partnership”. Discuss. (4 Marks)
- (c) 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? (3 Marks)

SUGGESTED ANSWERS BY ICAI FOR NOVEMBER 2019 PAPER**Answer - 1**

- (a) Responsibility of finder of goods (**Section 71** of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

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

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

- (b) As per the provisions of Sub-Rule (7) of Rule 3 of the Companies (Incorporation) Rules, 2014, an OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March, 2019 was ₹ 2.25 Crores. 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 ₹ 2 Crores, Mr. Anil can convert the OPC into a private limited company along with Sunil.

- (c) Sale of unascertained goods and Appropriation (**Section 23** of the Sale of Goods Act, 1930): Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description & quality stated in the contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after appropriation.

Answer - 2

- (a) 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

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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. But where a person promises to do more that 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.
- (vii) 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.
- (viii) 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.

- (b) Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]
The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.
- Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]
A LLP is not bound by anything done by a partner in dealing with a person if–
- the partner in fact has no authority to act for the LLP in doing a particular act; and
 - the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Answer - 3

- (a) (i) Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)
According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.
- OR
- (ii) Goodwill: The term “Goodwill” has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.
Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.
- (b) Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):
- The insolvent partner cannot be continued as a partner.
 - He will be ceased to be a partner from the very date on which the order of adjudication is made.
 - The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
 - The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
 - Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.
- (c) Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the

payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of **Section 59 to 61** of the Indian Contract Act, 1872.

- (i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.
- (ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.
- (iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

Answer - 4

- (a) Rights of an unpaid seller against the goods: As per the provisions of **Section 46** of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-
- (a) a lien on the goods for the price while he is in possession of them;
 - (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
 - (c) a right of re-sale as limited by this Act. [**Sub-section (1)**]

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

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

- (i) Right of lien (**Section 47**): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until

payment or tender of the price in the following cases, namely:-

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(ii) Right of stoppage in transit (**Section 50**): When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

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

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

(b) As per the provisions of **Section 30(5)** of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in **Section 30(7)** are as follows:

(A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

(ii) In the light of the provisions of **Section 30(7)** read with **Section 30(5)** of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Answer - 5

- (a) (i) As per the provisions of **Sub-Section (2)** of **Section 17** of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:
- the bulk shall correspond with the sample in quality;
 - the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of **Sub-Section(2)** of **Section 17** of the Act, M^{rs} Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

- (ii) Sale by Sample: (**Section 17** of the Sale of Goods Act, 1930): As per the provisions of **Sub-Section (1)** of **section 17** of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

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

- that the bulk shall correspond with the sample in quality;
 - that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
- (iii) In the instant case, the buyer does not have any option available to him for grievance redressal.
- (iv) In case M^{rs} Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

- (b) The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.

A memorandum is a public document under **Section 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

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

Contents of the memorandum: The memorandum of a company shall state—

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

Answer - 6

- (a) Coercion (**Section 15** of the Indian Contract Act, 1872): “Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

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

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

(b) **DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP**

S. NO.	BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

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

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

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

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

Roll No:

Total No. of Printed Pages :3

Total no. of Questions : 11

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

Questions in Section A are to be answered in the medium opted by the candidate has not opted for Hindi medium, his/her answers in Hindi, will not be checked.

Questions in Section B. are to be answered in English only, by all the including those who have opted for Hindi medium.

Answers to both the Sections are to be written in the same answer book.

SECTION - A**Question No. 1 is compulsory.****Answer any four questions from the remaining five questions.****Question 1**

- (a) Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y. Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872?(4 Marks)
- (b) ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores and issued Non-Convertible Debentures worth ₹ 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹ 100 Crores and Non-Convertible Debentures stands at ₹ 120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013? (4 Marks)
- (c) Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. (4 Marks)

Question 2

- (a) Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. (7 Marks)

- (b) State the circumstances under which LLP may be wound up by the Tribunal under the Limited Liability Partnership Act, 2008. (5 Marks)

Question 3

- (a) (i) What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932? (2 Marks)

OR

- (ii) Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. (2 Marks)

- (b) Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

- (i) What are the consequences of Non-Registration of Partnership firm?
(ii) What are the rights which won't be affected by Non-Registration of Partnership firm? (4 Marks)

- (c) In light of provisions of the Indian Contract Act, 1872 answer the following:

- (i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?
(ii) Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?
(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? (6 Marks)

Question 4

- (a) Explain any six circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per the Sale of Goods Act, 1930. (6 Marks)
(b) P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

- (i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

(6 Marks)

Question 5

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

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

(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?

(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid? (6 Marks)

(b) What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013. (6 Marks)

Question 6

(a) Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872. (5 Marks)

(b) Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. (4 Marks)

(c) Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis., on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013? (3 Marks)

SUGGESTED ANSWERS BY ICAI FOR NOVEMBER 2020 PAPER**Answer - 1**

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

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under **section 28** of the Indian Contract Act, 1872. Hence, Mr. C in the given case cannot recover the amount of ₹ 10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

- (b) As per **Section 2(6)** of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the -

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital.

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

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

- (c) The doctrine of Caveat Emptor given under the Sale of Goods Act, 1930 is subject to the following exceptions:

1. Fitness as to quality or use: Where the buyer makes known to the seller the particular purpose for which the goods are required, it is the duty of the seller

- to supply such goods as are reasonably fit for that purpose [Section 16 (1)].
2. Goods purchased under patent or brand name: In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
 3. Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
 4. Goods of Merchantable Quality: Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality.

The rule of Caveat Emptor is not applicable. [Section 16(2)].

5. Sale by sample: Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. Goods by sample as well as description: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
7. Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
8. Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

Answer - 2

(a) Definition of Fraud under Section 17 of the Indian Contract Act, 1872:

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

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact ;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

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

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

- (b) **Section 64** of the Limited Liability Partnership Act, 2008 states circumstances in which limited liability partnership (LLP) may be wound up by Tribunal.
- (a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
 - (b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
 - (c) if the LLP is unable to pay its debts;
 - (d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
 - (e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
 - (f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Answer - 3

- (a) (i) Partnership at will under the Partnership Act, 1932
According to **Section 7** of the Act, partnership at will is a partnership when:
1. no fixed period has been agreed upon for the duration of the partnership;
and
 2. there is no provision made as to the determination of the partnership.
- Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.
- OR
- (ii) A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:
- (i) the power of expulsion must have existed in a contract between the partners;
 - (ii) the power has been exercised by a majority of the partners; and
 - (iii) it has been exercised in good faith.
- If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.
- (b) (i) Consequences of Non-registration of partnership firm:
Under **Section 69** of the Indian Partnership Act, 1932 non-registration of partnership gives rise to a number of disabilities. Though registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:
- (a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.
 - (b) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
 - (c) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
 - (d) Third-party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.
- (ii) Non-registration of a firm does not, however, affect the following rights:
1. The right of third parties to sue the firm or any partner.
 2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the

property of a dissolved firm.

3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

- (c) (i) As per **Section 51** of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed. Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.
- (ii) 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.
In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.
Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of **section 25 (3)** are fulfilled.
- (iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

Answer - 4

- (a) In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.
- (1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - (a) If he was in possession of the goods or documents with the consent of the owner;

- (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to **Section 27** of the Sale of Goods Act, 1930).
- (2) Sale by one of the joint owners (**Section 28**): If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
- (3) Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (**Section 29**).
- (4) Sale by one who has already sold the goods but continues in possession thereof: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [**Section 30(1)**].
- (5) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [**Section 30(2)**].

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

- (6) Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
- (7) Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [**Section 54 (3)**].

- (8) Sale under the provisions of other Acts:
- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
 - (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]
- (b) (i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)
- (1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not, -
 - (a) use the firm name,
 - (b) represent himself as carrying on the business of the firm or
 - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
 - (2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co after following above conditions in the absence of any agreement.

- (ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

Answer - 5

- (a) As per the provisions of **Section 24** of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-
- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
 - (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
 - (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

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

- (i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (Two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.
- (ii) It may be noted that where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

- (b) **Section 8 Company-** Significant points
- Formed for the promotion of commerce, art, science, religion, charity, protection of the environment, sports, etc.
 - Requirement of minimum share capital does not apply.
 - Uses its profits for the promotion of the objective for which formed.
 - Does not declare dividend to members.
 - Operates under a special licence from the Central Government.
 - Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
 - Licence revoked if conditions contravened.
 - On revocation, the Central Government may direct it to
 - Converts its status and change its name

- Wind – up
- Amalgamate with another company having similar object.
- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of **Section 8** company.

Answer - 6

(a) **Distinction between Wagering Agreement and Contract of Insurance**

	Basis	Wagering Agreement	Contract 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 the insurance contract is the mutual consideration (premium & 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 an 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 an uncertain event.	Except for 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.

(b) **Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932):** Where-

- (a) a partner acting within his apparent authority receives money or property from

- a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of **section 27**:

It may be observed that the workings of the two clauses of **Section 27** are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

- (c) Foreign Company [**Section 2(42)** of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—
- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (ii) conducts any business activity in India in any other manner.

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

JANUARY 2021 PAPER

Roll No:

Total No. of Printed Pages : 2

Total no. of Questions :

Time allowed : 3 Hours

Maximum Marks : 100 (Section A – 60 & Section B – 40 marks)

IMPORTANT INSTRUCTIONS TO CANDIDATES

Questions in Section A are to be answered in the medium opted by the candidate. If a candidate has not opted for Hindi medium, his/her answers in Hindi, will not be evaluated. Questions in Section B, are to be answered in English only, by all the candidates, including those who have opted for Hindi medium.

Answers to both the sections are to be written in the same answer book.

Section A – (60 marks)

Question No. 1 is compulsory.

Answer any FOUR questions from the remaining FIVE questions.

Question 1

- (a) Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. (4 Marks)

- (b) ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

Directors and their relatives	190
Employees	15
Ex-employees	
(shares were allotted when they were employees)	20
Others	20
(Including 10 joint holders holding shares jointly in the name of father and son)	

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion.

(4 Marks)

- (c) What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930? (4 Marks)

Question 2

- (a) Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance. (7 Marks)
- (b) State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (5 Marks)

Question 3

- (a) (i) What do you mean by “Particular Partnership” under the Indian Partnership Act, 1932? (2 Marks)

OR

- (ii) Who is a nominal partner under the Indian Partnership Act, 1932 ? What are his liabilities? (2 Marks)
- (b) “Business carried on by all or any of them acting for all.” Discuss the statement under the Indian Partnership Act, 1932. (4 Marks)
- (c) Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.
Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.
Examine with reference to the Indian Contract Act, 1872:
- (i) On which date, the offer made by Mr. B will complete?
- (ii) Discuss the validity of acceptance.
- (iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? (6 Marks)

Question 4

- (a) What are the differences between a ‘Condition’ and ‘Warranty’ in a contract of sale? Also explain, when shall a ‘breach of condition’ be treated as ‘breach of warranty’ under provisions of the Sale of Goods Act, 1930? (6 Marks)
- (b) M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm’s name. The firm did not give any notice about P’s death to the public or the persons dealing with the firm. The

furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

- (i) Whether P's private estate is liable for the price of furniture purchased by the firm?
- (ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive? (6 Marks)

Question 5

- (a) Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.
 - (i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?
 - (ii) What is the remedy available to Mr. M? (6 Marks)
- (b) Explain Doctrine of 'Indoor Management' under the Companies Act, 2013. Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'. (6 Marks)

Question 6

- (a) The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872. (5 Marks)
- (b) Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. (4 Marks)
- (c) SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company. (3 Marks)

SUGGESTED ANSWERS BY ICAI FOR JANUARY 2021 PAPER**Answer - 1**

- (a) **Section 10** of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. **Section 23** of the said Act also states that every agreement of which the object or consideration is unlawful is void.

The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

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

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

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

- (b) In the given case, ABC Limited was having 245 members in the company. The Board of Directors of said company proposes to convert it into private company. In lines with **Section 2 (68)** of the Companies Act, 2013, a private company by its Articles, limits the number of its members to 200.

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

It is further provided that, following persons shall not be included in the number of members-

- (i) Persons who are in the employment of the company; and
- (ii) Persons, who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

As per the facts, ABC Limited has members constituting of Directors & their relatives, employees, Ex-employees and others including 10 joint holders.

In line with the requirement for being a private company, following shall be restricted to be as members i.e., Directors & their relatives & joint holders holding shares jointly constituting 200 members (190+10).

Accordingly, ABC Limited when converted to private company shall not be required to reduce the number of members as the number of members as per requirement of a

private company, is fulfilled that is of maximum 200 members.

- (c) **Rules of Auction sale:** Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:
- (i) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
 - (ii) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
 - (iii) **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
 - (iv) **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
 - (v) **Reserved price:** The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and
 - (vi) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Answer - 2

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

Legal Rules regarding a valid acceptance

- (1) **Acceptance can be given only by the person to whom offer is made.**
In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.
- (2) **Acceptance must be absolute and unqualified:** As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.
- (3) **The acceptance must be communicated:** To conclude a contract between the

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

- (4) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
- (5) **Time:** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
- (6) **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
- (7) **Acceptance by conduct/ Implied Acceptance:** Section 8 of the Act lays down that “the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal.

This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

- (b) As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -
- with intent to defraud creditors of the LLP,
 - or any other person, or
 - for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered

any loss by reason of such conduct.

Answer - 3

- (a) (i) **Particular partnership:** A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking, the partnership is called 'particular partnership'.
A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

OR

- (ii) **Nominal Partner:** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

Liabilities: He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business.

He is, however liable to third parties for all acts of the firm.

- (b) **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

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

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

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

- (c) (i) According to **Section 4** of the Indian Contract Act, 1872,
"the communication of offer is complete when it comes to the knowledge of the

person to whom it is made”.

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

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

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

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

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

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

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

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

- (iii) It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete.

Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

Answer - 4

- (a) **Difference between conditions and warranties:**

The following are important differences between conditions and warranties.

Point of differences	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Breach of condition be treated as a breach of warranty

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

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

- (i) Where the buyer altogether waives the performance of the condition.
A party may for his own benefit, waive a stipulation.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty.
That is to say, he may claim only damages instead of repudiating the contract.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

(b) According to **Section 35** of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

In the light of the facts of the case and provisions of law:

- (i) Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie

against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.

- (ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Answer - 5

- (a) (i) According to **Section 15** of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.
Further, as per **Section 16(l)** of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.
 - (ii) When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.
- (b) Doctrine of Indoor Management (The Companies Act, 2013): According to the “doctrine of indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of “constructive notice” and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own.

That is to say, it is inapplicable to the following cases, namely:

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

Answer - 6

- (a) The general rule is that an agreement made without consideration is void (**Section 25** of the Indian Contract Act, 1872). In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule.

In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** Conditions to be fulfilled under **section 25(1)**
 - (i) It must be made out of natural love and affection between the parties.
 - (ii) Parties must stand in near relationship to each other.
 - (iii) It must be in writing.
 - (iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under **Section 25(2)**.

In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

- (i) The services should have been rendered voluntarily.
 - (ii) The services must have been rendered for the promisor.
 - (iii) The promisor must be in existence at the time when services were rendered.
 - (iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation

it is valid without consideration [Section 25(3)].

4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gift i.e. when gift is made by a donor and accepted by the donee, the rule, no consideration no contract does not apply.
6. **Bailment:** In case, the delivery of goods is made by one person to another for a particular purpose, without transfer of ownership, no consideration is required.
7. **Charity:** If a promisee undertakes the liability on the promise of another person to contribute to charity, the contract shall be valid without consideration.

- (b) **Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932):** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, -

by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

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

- (i) The Central Government, or
- (ii) By any State Government or Governments, or
- (iii) Partly by the Central Government and partly by one or more

State Governments, and the section includes a company which is a subsidiary company of such a Government company.

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

Hence, SK Infrastructure Limited is a Government company.

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