

Paper-2: Business Laws

IMPORTANT QUESTIONS LIST

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Chapter : 1

Indian Regulatory Framework

Question 1

Explain in brief the various types of laws in the Indian Legal System.

Answer

The laws in the Indian legal system could be broadly classified as follows: Criminal Law: Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same.

Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (Crpc). The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes. Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law. Civil Law: Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort. Some examples of civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant. Common Law: A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle supporting common law. It is a Latin phrase that means “to stand by that which is decided.” The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or “on all four legs” with the earlier decision. Principles of Natural Justice: Natural justice, often known as Jus Natural deals with certain fundamental principles of justice

going beyond written law. Nemo judex in causa sua (Literally meaning “No one should be made a judge in his own cause, and it’s a Rule against Prejudice), audi alteram partem (Literally meaning “hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

Question 2

What do you understand by Indian Judicial System and what are its various functions?

Answer

Indian Judicial System is a branch which through the enforcement of Law resolves dispute between

citizens or between citizens and the Government. The functions of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

Indian Judicial System performs his functions through the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts, District Courts and Metropolitan Courts.

Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

Question 3

Why is awareness of law essential to Chartered Accountants?

Answer

Chartered Accountants must be aware of law for the following reasons:-

- * They need this knowledge as a member.
- * Awareness of law is essential since they are first level of contact on many legal matters.
- * So that they threshold level. can advice management by clients on legal matters at
- * To later specialize in subjects like taxation since tax law is abuelas
- * To have basic awareness of Legal & Regulatory Formwork of country
- * Point wise is good but not everywhere
- * Underline Important key words
- * Unte to the point
- * Write spaciously (if writing not good)

Question 4

Explain the three lists within the Indian constitution?

Answer

The condition of India has 3 lists. This was done to ensure that making power is divided between

State Governments. the law maker Depending on the list in which a matter falls, it will become the subsidiary for that respective Government.

* The 3 lists are - Central List, State List and Joint List

* For Example

1) Income Tax is a Central subject so for that we have 1 Income Tax Law throughout India, by Central Govt, through Ministry of Finance.

2) Stamp Duty governing laws fall under both Central & state Govt. Matters

Question 5

What is the detailed process of making a law in India?

Answer

The detailed process of making Law In India. :

- a) Bill: when law is merely proposed in Parliament
- b) Discussions and debates happen and then it is passed in Lok Sabha.
- c) Thereafter, it is passed in Rajya Sabha
- d) Assent of President has to be finally given.
- e) Govt finally notifies in the publication called official Gazette of India and law becomes applicable from date mentioned in notification called Effective Date

Finally the Bill has become an Act.

Question 6

After a law is passed in Parliament, what is the enforcing authority of law in India?

Answer

Enforcement of Law

* Once law is passed in Parliament, it has to be monitored to know whether it is being followed or not. This is done by an executive.

* The enforcing authority will fall under Central or state law depend on whether the law is Central Law or state Law.

* Various Ministries like MOF, MCA, MHA, MHA etc. are allotted this work They have a minister heading them and number of IAS and other services officers.

Chapter: 2

The Indian Contract Act, 1872

Question 1

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

Answer

As per the provision of the Indian Contract Act, 1872, the agreement without consideration is not valid. But, in certain conditions, an agreement without consideration is valid and enforceable:

- 1) **Natural love and affection:** There is no consideration required if the agreement is made by natural love and affection. The contracts, in this case, shall be valid if:
 - i) There is an agreement in writing.
 - ii) It is registered.
 - iii) It is made on account of natural love and affection.
 - iv) It is made between parties standing in near relation to each other.
- 2) **Compensation for past voluntary services:** When the promisor promises to pay for an act done by a promisee in the past for the promisor, the act so performed by a promisee for the promisor shall become a consideration for the amount to be promised.
- 3) **Promise to pay the time-barred debt:** As per the Limitations Act, 1963, if a debt is not claimed within three years, it cannot be recovered after that. But, a promise to pay the time-barred debt is enforceable. The promise should be in writing and signed by the person making it or by his authorized agent. The promise may be for the whole or any part of the debt.
- 4) **Agency:** No consideration is necessary to create an agency. An agent can be appointed without consideration, and the acts done by him shall be valid.
- 5) **Completed gift:** Gift made does not require any consideration. It is immaterial whether or not the party stands in the near relationship.
- 6) **Bailment of Goods:** Bailment of goods created required no consideration.
- 7) **Charity:** If a promisee undertakes the liability on the promise of a person to contribute to charity, there shall be a valid contract.

Question 2

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

Answer

- It is necessary to have consideration, but it is not necessary that consideration should be adequate.
- If a party gets what he has contracted for and it is of some value, the court will not enquire whether it is equivalent to the promise.
- The parties to the contract cannot avoid the contract on the ground of inadequacy of consideration.
- It should be noted that where consideration is inadequate on the ground of free consent of parties to contract, then only the contract will be void; otherwise, it will be valid.

Question 3

Mr Shyam owned a motor car .He approached Mr Vikas and offered to sell his motor car for ₹3 00,000. Mr Shyam told Mr Vikas that the motorcar 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 Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹300,000 to Mr Shyam. After ten days, Mr Vikas came back with the car and stated that the claim made by Mr Shyam 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 Vikas can rescind the Contract in the above ground.

Answer

As per the provision 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 the 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 he would have been if the representation made had been true.

Facts of the case: Mr Shyam owned a motor car. He approached Mr Vikas and offered to sell his motor car for ₹3,00,000. Mr Shyam told Mr Vikas that the motor car is running at the rate of 30KMs per litre of petrol .Both the fuel meter and the speed meter of the car were working perfectly.

Mr Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹3,00,000 to Mr Shyam. After ten days, Mr Vikas came back with the car and stated that the claim made by Mr Shyam regarding fuel efficiency was not correct and, therefore, there was a case of misrepresentation.

Conclusion:

In the given case, both the fuel meter and the speed meter of the car were working properly. Mr. Vikas had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr Vikas cannot rescind the contract on the above ground.

Question 4

Explain the term ‘Quasi Contracts’ and state their characteristics

Answer

Quasi Contracts are based on the principle of equity, justice and good conscience. Quasi contract intends to prevent unjust enrichment, i.e., enrichment (benefit) of one person at the cost of another. Generally, promisors undertake the duty to perform the contract, or the promisor performs the contract when it is a desire by the promisee. However, in the case of Quasi contracts, obligations to perform the contracts performed by the law upon a person for the benefit of another, and even in the absence of a contract, such cases know as Quasi-contract.

The salient feature of the Quasi contract:

- i) It does not arise from any agreement of the party concerned, but it is imposed by the law.

- ii) Duty and not promise is the basis of such contract.
- iii) The right available are not against the whole world but against a particular person or persons only.
- iv) Such a right is always a right to money and generally, though not always Liquidated sum of money.

Question 5

Define the term “Acceptance”. Discuss the legal provisions relating to communication of acceptance.

Answer

As per the provision of the Indian Contract Act, 1872, the person to whom the offer is made signifies his assent thereto; the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

Communication of Acceptance is completed on two different dates on one date as against the offeror and on another date as against the acceptor.

Types of communication of Acceptance:-

1) As against offeror:

When it is put into the course of transmission so that it is out of control of acceptor.

For instance, Mr A offers to Mr B on 20th June. Mr B received it on 22nd June and read on 25th June, accept the letter draft on 27th June and posted it on 28th June. Hence, communication of acceptance is completed against the offeror, put into the transmission or when the letter posted on 28th June so that it is out of control of the acceptor.

2) As against Acceptor:

When it is received by the person to whom it is made or when the letter of acceptance is received by the offeror.

For instance, Mr A offers to Mr B on 20th June. Mr B received it on 22nd June and read on 25th June, accept the letter draft on 27th June and posted it on 28th June. Mr A received the letter on 30th June. Hence, communication of acceptance is completed against the acceptor on 30th June. So, when the letter is received by the person to whom it is made.

Question 6

Mr S, aged 58 years, was employed in a Govt. 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 to induce him to retire.

Mr S refused at first instance, but when he evaluated the amount offered as consideration as 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 the provision of The Indian Contract Act, 1872.

Answer

As per the provisions of the Indian Contract Act, 1872, an agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is opposed to the public policy and hence, shall be void.

Facts of the case:

Mr S, aged 58 years, was employed in a Govt. 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 the 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 to retire from his office.

Conclusion:

In the present case, the agreement between Mr S and Mr D is void as Mr D is inducing Mr S to retire from his post in order get the post for himself.

Question 7

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

Answer

As per the provision of the Indian Contract Act, 1872, a claim for necessities supplied to a minor is enforceable by law, only against the 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 necessities. There is no personal liability of the minor, but only his property is liable.

Facts of the case:

X, a minor, was studying in M. Comina college. On 1st July 2019, he looks a loan of ₹1 Lakh from B for payment of his college fees and purchase books and agreed to repay by 31st December 2019. X possesses assets worth ₹9 Lakhs. On the due date, X fails to pay back the loan to B.

Conclusion:

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

Question 8

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

Answer

As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The fact of impossibility may be known or unknown to the promisor or promisee.

It may be added by clarification here that the term “contract” shall be understood as an “agreement”.

Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void.

In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio).

Hence, this contract is void being not enforceable by law.

Question 9

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

Answer

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

In the given problem, the transfer of house made by Mr. Shyam Mundra on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable.

Note – Alternatively you can also solve question through Completed gift provision

Question 10

Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting ₹ 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her

father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

- (i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?
- (ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?
- (iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity?

Answer

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

- (i) By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.
- (ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

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

- (iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Hence, in this case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

Question 11

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

Answer

Section 16 of Indian Contract Act, 1872 provides that a contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that

one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Further, a person is deemed to be in a position to dominate the will of another—

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

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

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

Question 12

Mukesh is running a grocery store in Delhi. He sells his grocery business, including goodwill worth ₹1,00,000 to Rohit for a sum of ₹ 5,00,000. After the sale of goodwill, Rohit made an agreement with Mukesh. As per this agreement, Mukesh cannot open another grocery store (similar kind of business) in the whole of India for next ten years. However, Mukesh opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Mukesh with reference to Indian Contract Act, 1872?

Answer

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

- (i) Where the restraint is to refrain from carrying on a similar business,
- (ii) The restraint should be within the specified local limits,
- (iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price,
- (iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

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

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

Question 13

Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872.

Answer

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 this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. S had promised to deliver some photographs to Mr. M, the legal representatives of Mr. S shall be bound to deliver the photographs in this situation.

Question 14

Mr. Sohan, a wealthy individual provided a loan of ₹ 80,000 to Mr. Mukesh on 26th February, 2021. The borrower, Mr. Mukesh asked for a further loan of ₹ 1,50,000.

Mr. Sohan agreed but provided the loan in parts on different dates. He provided ₹ 1,00,000 on 28th February, 2021 and remaining ₹ 50,000 on 3rd March, 2021.

On 10th March, 2021 Mr. Mukesh while paying off part ₹ 75,000 to Mr. Sohan insisted that the lender should adjust ₹ 50,000 towards the loan taken on 3rd March, 2021 and balance as against the loan on 26th February, 2021.

Mr. Sohan 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. Mukesh 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 be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist any order of adjustment on their part?

Answer

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. Mukesh 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 Mr. Mukesh fails to specify the manner of appropriation of debt on part repayment, Mr. Sohan 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. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

Question 15

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

Answer

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

Question 16

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

Answer

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

divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.

In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e. ₹ 10,00,000 is valid and enforceable. However, the agreement to pay ₹ 50,000 for gambling done in the house is illegal and thus void.

Hence, in the instant case, sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law.

Question 17

Rohan found a wallet in a restaurant. He enquired 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 the wallet till the true owner is found. After a week, Rohan went back to the restaurant to enquire about the wallet. The manager refused to return it to Rohan, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can Rohan recover the wallet from the Manager?

Answer

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who find goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, Finder is entitled to possession against all except the true owner..

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

Question 18

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

Answer

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

- In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.
- Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Atul and the said agency is not revocable. The

revocation of agency by Bhupendra is not lawful.

Question 19

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

Answer

Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

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

Chapter : 3

The Sale of Goods Act 1930

Question 1

“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 Sale of Goods Act, 1930?

Answer

As per the provision of the Sale of Goods Act, 1930, “A non-owner can convey better title to the bonafide purchaser of goods for value” in the following case:

- 1) Sale by a mercantile agent: A sale made by a mercantile agent of the goods for the document of title to goods would pass a good title to the buyer if:
 - i) He was in possession of the goods or documents with the consent of the owner.
 - ii) If the sale was made by him when acting in the ordinary course of business as a mercantile agent.
 - iii) 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.
- 2) Sale by one of the joint owners: 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 from 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.
- 4) Sale by one who has actually sold the goods but continues in possession thereof: If a person has sold the 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 delivery thereof in good faith and without the notice of the previous sale, he would have good title to them.
- 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, he may sell or pledge or dispose of the goods to the third person.
- 6) Effect of estoppel: When the owner let the other person sell his goods, and the owner does not deny his authority to sell those goods.
- 7) Sale by an unpaid seller: When an unpaid seller has 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.
- 8) Sale under the provisions of the other Acts:
 - i) Sale by an Official Receiver or Liquidator of the company.
 - ii) Purchase of goods from a finder of goods.
 - iii) A sale by Pawnee can convey a good title to the buyer.

Question 2

What is the doctrine of “Caveat Emptor”? What are the exceptions to the doctrine of “Caveat Emptor”?

Answer

As per the provision of the Sale of Goods Act, 1930, the doctrine of ‘Caveat Emptor’ means ‘Let the buyer beware’. When the seller displays their goods in the open market, it is for the buyers to make proper selection or choice of the goods. If the goods turn out to be defective, the buyer 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 to the rule 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.
- 2) **Goods purchased under patent or brand name:** In a case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
- 3) **Goods sold by description:** Where the goods are sold by description, there is an implied condition that the goods shall correspond with the description. If it is not so, then the 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.
- 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.
- 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.
- 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.
- 8) **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud, and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case, the buyer has a right to avoid the contract and claim damages.

Question 3

What are the rights of the buyer against the seller if the seller commits a breach of

contract under the Sale of Goods Act, 1930?

Answer

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

- 1) Damages for non-delivery: 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: Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for a specific performance. The court can order for specific performance only when the goods are ascertained or specific.
- 3) Suit for breach of warranty: Where there is a breach of warranty on the part of the seller, or where the buyer elects to treat a breach of condition as a breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may:
 - ✓ Set up against the seller the breach of the warranty in diminution or
 - ✓ extinction of the price: or Sue the seller for damages for breach of warranty.
- 4) Repudiation of the contract before due date: 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 whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

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

Question 4

What is an implied warranty, and state the various types of Implied Warranties?

Answer

Implied warranties: It is a warranty which the law implies into the contract of sale. In other word, 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.

As per the provision of the Sale of Goods Act, 1930, the following are the different types of implied warranties:

- 1) Warranty as to undisturbed possession: There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer's possession of the goods is later on disturbed, he is entitled to sue the seller for the breach of the warranty.
- 2) Warranty as to the non-existence of encumbrances: There is an implied warranty that the goods shall be free from any charge or encumbrances in favour of any third party, which have not

been declared or known to the buyer before or at the time the contract is entered into.

- 3) Warranty as to quality or fitness by the usage of trade: An implied warranty as to quality or fitness for a particular purpose may be 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 for the damages

Question 5

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

Answer

As per the provision of the Sale of Goods Act, 1930, 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 a barter. However, a contract of sale of goods for a fixed price payable partly in goods and partly in cash is held to be a valid contract of sale.

Facts of the case:

The new TV set is agreed to be sold for ₹30,000 and the price is payable partly in exchange for the old TV set and partly in cash of ₹20,000.

Conclusion:

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

Question 6

Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to 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 the price.

- i) **Discuss whether Mr T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930?**
- ii) **What is the remedy available to Mr M?**

Answer

As per the provision 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 the sample and the description. In case the goods do not correspond to both with the sample or with the description or vice versa or both, the buyer can repudiate the contract. Also, when the buyer makes known to the seller the particular purpose for which the goods are required, and he relies on the judgement or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

Facts in the case:

Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to 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.

Conclusion:

- i) In the given case, Mr M had revealed to 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) In the present case, the remedy available to Mr M is that he can either rescind the contract or claim a refund of the price paid by him, or he may require Mr T to replace it with the fan he wanted.

Question 7

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 the Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?

Answer

As per the provision of the Sale of Goods Act, 1930, the right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. After that, the seller regains possession of the goods. This 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 to take 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 a 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.

Facts of the case:

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.

Conclusion:

In the present case, the railway authorities cannot stop 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 possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes possession of the goods.

Question 8

Explain the rules to Auction as per the Sale of Goods Act, 1930.

Answer

As per the provision of the Sale of Goods Act, 1930, rules to regulate the sale of the auction are: -

- 1) Goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject to a separate contract of sale.
- 2) Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner, and until such announcement is made, any bidder may retract from his bid.
- 3) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller, and where such right is expressly reserved, but not otherwise, the seller or anyone person on his behalf may bid at the auction.
- 4) When the sale is not notified by the seller: When the sale is 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 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.
- 5) Reserved price: The sale may be notified to be subject to a reserved or upset price.
- 6) Pretended to bid: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 9

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 good condition. Advise Suraj as to what remedy is available to him against Sohan.

Answer

As per the provision of the Sale of Goods Act, 1930, an unpaid seller has a right to institute a suit for price against the buyer personally.

- i) 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, the seller may sue him for the price of the goods.
- 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.

Facts of the case:

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 good condition.

Conclusion:

In the present case, 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 pending of the suit.
- 3) Costs of the proceedings.

Question 10

State the various essential elements involved in the sale of unascertained goods and their appropriation.

Answer

As per the provision of the Sale of Goods Act, 1930, appropriation of goods involves the selection of goods with the intention of using them in the performance of the contract and with the mutual consent of the buyer and seller. The essentials are:

- 1) There is a contract for the sale of unascertained or future goods.
- 2) The goods should conform to the description and quality stated in the contract.
- 3) The goods must be in a deliverable state.
- 4) 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.
- 5) 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.
- 6) The assent may be express or implied.
- 7) The assent may be given either before or after appropriation.

Question 11

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

Answer

As per the provision of the Sale of Goods Act, 1930, the following elements must co-exist so as to constitute a contract of sale of goods: -

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

Question 12

Ms Geeta went to 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. Ms Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon the purchase. The shopkeeper showed her a bowl of rice as a 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 if the dish is prepared with these rice would not taste the same as the quality of rice was not as per the requirement of the dish.

Now, Ms Geeta wants to file a suit of fraud against the seller, alleging he of selling a mix of the good and cheap quality of rice. Will she be successful?

Decide the fate of the case and options open to the buyer for grievance redressal.

What would be your answer in case Ms Geeta specified her exact requirement as to the length of rice?

Answer

As per the provision of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition:

- 1) the bulk shall correspond with the sample in the quality;
- 2) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

Also, the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on a reasonable examination of the sample, and they can be discovered only when the good is put to use. If the defect is easily discovered on inspection and the buyer takes delivery after inspection, he has no remedy.

Facts of the case:

Ms Geeta went to 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. Ms Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon the purchase. The shopkeeper showed her a bowl of rice as a 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 if the dish is prepared with these rice would not taste the same as the quality of rice was not as per the requirement of the dish. Now, Ms Geeta wants to file a suit of fraud against the seller, alleging he of selling a mix of the good and cheap quality of rice.

Conclusion:

Mrs Geeta cannot file a suit of fraud against the seller, alleging him of selling a mix of good and cheap quality rice. Since the defect in the rice can be discovered through ordinary examination. Hence, Mrs Geeta does not have any option available for grievance and redressal.

If Mrs Geeta specified her exact requirement as to the length of rice, then the sample she was shown must correspond to the bulk in terms of quality and length both. If the quality or length had mismatched the sample, Mrs Geeta would sue the seller for the damages.

Question 13

A delivered a horse to B on a 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?

Answer

As per the provision 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:

- i) When the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction
- ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice to 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
- iii) He does something for the good, which is equivalent to accepting the goods, e.g., he pledges or sells the goods.

Also, if there is an agreement to sell specific goods, and subsequently, the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement becomes void.

Facts of the case:

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

Conclusion:

In the present case, the ownership of the horse still belongs to seller A. B will be considered as the owner of the horse only when B does not return the horse to A within the 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.

Question 14

Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send 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 provision of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent?

Answer

As per the provision of the sale of Goods Act, 1930, 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.

Also, where there is a contract for the sale of unascertained or future goods by description and such goods, already in a deliverable state are unconditionally appropriated to the contract, either by the seller or buyer, the property in the goods passes to the buyer after appropriation.

Facts of the case:

Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send 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.

Conclusion:

In the present case, following conclusions can be considered:

- 1) 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 the case of 60 bales would be borne by Mr S. as regards 40 bales; the loss would be borne by Mr V since the goods have not been identified and appropriated.
- 2) If the bales were not selected with the consent of the buyer, then the property in the goods has not been transferred at all, and hence the loss of 100 bales would be borne by Mr V completely.

Question 15

Define Ascertained and Unascertained Goods with an example each.

Answer

Ascertained Goods are those goods that are identified in accordance with the agreement after the contract of sale is made. When from a large number of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Example: A person goes to a vegetable market and demand 2kgs of tomatoes. When the seller appropriates 2kgs of tomatoes in accordance with the agreement, the goods become ascertained.

Unascertained goods: The goods which are not specifically identified or ascertained at the time of the making of the contract are known as 'unascertained goods'.

Example: X agrees to sell Y one bag of wheat out of hundreds of bags placed in his/her godown, which is the sale of unascertained goods because it is not known which bag is to be delivered.

Question 16

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

Answer

As per the provision 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:

- i) When the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction
- ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice to 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
- iii) He does something for the good, which is equivalent to accepting the goods, e.g., he pledges or sells the goods.

Facts of the case:

Ms Preeti owned a motor car which she handed over to Mr Joshi on a 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.

Conclusion:

In the present case, Mr Joshi pledged the motor car to Mr Ganesh, which has attracted the third condition that he has done something to the good, which is equivalent to accepting the goods. Therefore, the property therein passes to Mr Joshi. Now in this situation, Ms Preeti cannot claim back her Motor Car from Mr Ganesh, but she can claim the price of the motor car from Mr Joshi only.

Question 17

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 to avoid being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?

Answer

As per the provision of the Sale of Goods Act, 1930, 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.

Facts of the case:

X and Y have entered into a contract for the sale of the car, but they did not fix the price of the car. X refused to sell the car to Y on this ground.

Conclusion:

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

Question 18

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

Answer

As per the provision of the Sale of Goods Act, 1930, in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods. But if the buyer:

- 1) expressly or impliedly makes known to the seller the particular purpose for which the goods are required,
- 2) relies on the seller's skill and judgement,
- 3) and the seller sell goods of that description which the buyer wants, then the buyer can make the seller responsible.

Facts of the case:

Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her shin 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.

Conclusion:

In the present case, Mrs G purchased the tweed coat without informing 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.

Question 19

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

Answer

As per the provision of the Sale of Goods Act, 1930, a mercantile agent has the 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 in the ordinary course of business. If the buyer buys goods from a mercantile agent, who has no authority from the principal to sell, gets a good title of the goods if the following conditions are satisfied:

- 1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- 2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- 3) The buyer should act in good faith.
- 4) The buyer should not have, at the time of the contract of sale, notice that the agent has no authority to sell.

Facts of the case:

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

Conclusion:

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

Question 20

A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract.

Discuss if such a sale made by non-owner is valid or not as per the provisions of Sale of Goods Act, 1930?

Answer

Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods. One of the exceptions is sale by person in possession under a voidable contract:

- 1) If a person has possession of goods under a voidable contract.
- 2) The contract has not been rescinded or avoided so far
- 3) The person having possession sells it to a buyer
- 4) The buyer acts in good faith
- 5) The buyer has no knowledge that the seller has no right to sell.

Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.

Facts of the case:

A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract.

Conclusion:

Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of ring made by Mr. A to Mr. C is a valid sale.

Chapter : 4

Indian Partnership Act, 1932

Question 1

Is the registration of a partnership firm compulsory? Explain. Discuss the various disadvantages that a non-registered partnership firm can face in brief?

Answer

As per the Indian Partnership Act, 1932, the registration of a partnership firm is not mandatory. An Indian partnership firm need not be registered from the beginning but can be registered during continuation also.

But, if a partnership firm is not registered, it has to face some consequences:

- 1) No suit in a civil court by the firm or other co-partners against the third party: The firm or any of its partners cannot bring an action against the third party for breach of contract entered into by the firm unless the firm is registered.
- 2) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.
- 3) An aggrieved partner cannot bring legal action against other partners or the firm: A partner of an unregistered firm (or any other person on his behalf) cannot bringing legal action against the firm or any partner of 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 if the firm is dissolved.
- 4) Third-party can sue the firm: In the case of an unregistered firm, an action can be brought against the firm by a third party

Question 2

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

- 1) To what extent X will be liable?
- 2) Can L recover his debt from X?

Answer

As per the provision of the Indian Partnership Act, 1932, a minor cannot be admitted to a partnership firm, but, with the consent of all the partners, he may be admitted to the benefits of the partnership.

But, if the minor:

- has attained majority, or
- obtains the knowledge that he had been admitted to the benefits of the partnership firm, whichever is later,

then such person shall, within 6 months from the date of attaining the majority or obtaining the

knowledge of being admitted to the benefits of the partnership, give a public notice that he has or has not elected to become a partner in the firm.

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

Fact of the case:

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

Conclusion:

- 1) Since X failed to give the public notice after attaining the majority, he should become a partner in the firm on the expiry of six months after attaining the majority. After becoming the partner of the firm, his rights and liabilities as a major partner will be applicable, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of the partnership.
- 2) Yes, L can recover his debt from X because now X has attained majority and is liable to third parties for all acts of the firm.

Question 3

Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price. Does MU is liable for such a purpose?

Answer

As per the provision of the Indian Partnership Act, 1932, a partner by holding out/partner by estoppel means when a person is represented as a partner by other partners of the firm, he is then stopped from denying the character he has assumed and upon the faith of which creditors have presumed him to be a partner. Also, if a person himself, by his words or conduct, have induced others to believe that he is a partner, then also he shall be regarded as partner by holding out or partner by estoppel.

Facts of the case:

Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price.

Conclusion:

In the present case, MU (an employee) is also liable for the price because he becomes a partner by holding out.

Question 4

Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts. Explain the rights of Amaan's legal representatives against the firm under the Indian Partnership Act, 1932.

Answer

As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -

- Interest at 6% p.a, on amount of his share in the property, or
- Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher.

This provision is subject to the contract to the contrary.

Fact of the case:

Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts.

Conclusion:

In the present case, Amaan's legal representatives shall be entitled at their option to:

- 20% profits; or
- Interest at the rate of 6% p.a. on the amount of Amaan's share in the property.

Amar and Aman cannot continue the business without settling the accounts with Amaan's legal representatives.

Question 5

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 2019, 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 the united approval of the 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 to expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?**

Answer

As per the provision 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 includes three things:

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

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

Fact of the case:

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 2019, 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 the united approval of the rest of the partners.

Conclusion:

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 to 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 it has been exercised in good faith.

Question 6

State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

Answer

As per the provision of the Indian Partnership Act, 1932, the 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 a 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 the 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, willfully or persistently commits a 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. The following comes into the category of breach of contract:
 - i) Embezzlement,
 - ii) Keeping erroneous accounts
 - iii) Holding more cash than allowed
 - iv) Refusal to show accounts despite repeated requests 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 just and equitable grounds:
- i) Deadlock in the management.
 - ii) Where the partners are not on talking terms.
 - iii) Loss of substratum.
 - iv) Gambling by a partner on a stock exchange.

Question 7

Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore. Discuss in brief the points for which Mr B is not entitled during the continuance of the partnership?

Answer

As per the provision of the Indian Partnership Act, 1932, when a partner transfers his interest in the firm to a transferee, then such transferee shall not be entitled, during the continuance of the firm:

- to interfere in the conduct of business, or
- to require an account, or
- to inspect the books of the firm. But, the transferee is entitled:
- to receive the share of the assets of the transferring partner at the time of the dissolution of the firm, and
- to require the accounts of the firm for ascertaining his share from the date of the dissolution.

Facts of the case:

Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore.

Conclusion:

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 profit as agreed to by partners, .i.e, he cannot challenge the accounts.

Question 8

“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 the existence of partnership as per the Indian Partnership Act, 1932?

Answer

As per the provision 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 a partnership, the following things must be present:

- 1) **Agreement:** Partnership is created by agreement and not by status. The relation of partnership arises from the contract and not from status.

- 2) **Sharing of Profit:** Sharing of profit is an essential element to constitute a partnership. But, it is only prima facie evidence and not conclusive evidence in that regard. The sharing of profits would not by itself make such person partners.
- 3) **Agency:** The 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 the firm binds all the partners.

Question 9

Ms Lucy, while drafting the partnership deed to take care of few important points. What are those points? She wants to know the list of information which must be part of the partnership deed drafted by her. Also, give a list of information to be included in the partnership deed?

Answer

As per the provision of the Indian Partnership Act, 1932, a document which contains various terms and conditions related to the relationship of partners to each other is called a partnership deed.

The information contained in a partnership deed is as follows:

- 1) Name of the partnership firm.
 - 2) Name 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) The 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 the expulsion of a partner in case of breach of duty or fraud
- Ms Lucy, while drafting the partnership deed to take care of few important points:
- i) The partnership agreement must be in writing. An oral partnership agreement is not a partnership deed.
 - ii) The partnership deed contains various terms & conditions as to the relationship of the partners to each other.
 - iii) The partnership comprises of immovable property, then the partnership deed must be in Writing, stamped & registered under Registration Act
 - iv) If the partnership comprises of no immovable property, then the partnership deed must be writing and Stamped according to the provisions of Stamp Act, 1899.

Question 10

Explain the various effects of insolvency of a partner as per the Indian Partnership Act, 1932

Answer

As per the Indian Partnership Act, 1932, where a partner in a firm is adjudicated insolvent, he ceases

to be a partner on the date on which the order of adjudication is made, whether or not the firm is dissolved.

Effects of insolvency of a partner:

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

Question 11

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

- 1) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.
- 2) State the liabilities of a minor partner both:
 - i) Before attaining majority and
 - ii) After attaining majority.

Answer

- 1) As per the provision of the Indian Partnership Act, 1932, rights which can be enjoyed by a minor partner are:
 - a) A minor partner has a right to his agreed share of the profits and of the firm.
 - b) He can have access to, inspect and copy the accounts of the firm.
 - c) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm and not otherwise.
 - d) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then he is not liable for any acts of the firm after the date of the serving of such public notice.
- 2) **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.
- 3) **Liabilities of a minor partner after attaining majority:**
 - a) 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.

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

Question 12

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the 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:

- 1) Rights P & Q to start a competitive business.**
- 2) Rights of P & Q regarding their share in the property of M/S PQRS & Co.**

Answer

As per the provision of the Indian Partnership Act, 1932, an outgoing partner may carry the business that is competing with that of the firm, but he may not:

- use the firm's name;
- represent himself as carrying on the business of the firm; or
- solicit the customers who were dealing with the firm before such outgoing partner was ceased to be a partner.

However, the partner may agree with the outgoing partner that 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 restraints are reasonable.

As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -

- Interest at 6% p.a, on amount of his share in the property, or
- Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher.

This provision is subject to the contract to the contrary.

Facts of the case:

P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the 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.

Conclusion:

- P & Q can start a competitive business in the name of M/S PQ & Co. after following the above conditions in the absence of any agreement.

2) In the present case, P & Q shall be entitled at their option to:

- profits of the firm made from the date on which P & Q left the firm; or
- interest at the rate of 6% p.a. on the amount of P & Q's share in the property.

Question 13

A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of ₹350? Assume there is no contract between the partners regarding the above.

Answer

As per the provisions of the Indian Partnership Act, 1932, subject to the contract between the partners, if any partner has derived any personal profits:

- from any transaction of the firm or from the use of firm's name or firm's property; or
- from the business carried on by the partner, which is competing and of the same nature as that of the firm,

then the partner shall account for such profits and pay it to the firm.

Facts of the case:

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

Conclusion:

In the given scenario, Mr. B had made an extra profit of ₹150 per Kg. This is arising purely out of the transaction of the firm. Hence, Mr. B is accountable to the firm for the extra profit earned by him.

Question 14

Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

Answer

As per the provisions of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can be varied by an express agreement, or by a course of dealings, in which the partner will be entitled to remuneration. Thus, a partner can claim remuneration where, in a firm, it is customary to pay remuneration to a partner for conducting the business of the firm. He can claim it even in the absence of a contract for the payment of remuneration.

Facts of the case:

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

Conclusion:

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

Question 15

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

- a) **Whether Bohan is liable for the dues of Karan against the firm.**
- b) **In case, Karan has filed the suit against firm, whether Bohan would be liable?**

Answer

As per the provisions of the Indian Partnership Act, 1932, a person who lends his name to the firm without having any real interest in it is called a nominal partner. 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. However, a nominal partner is liable to third parties for all acts of the firm.

Facts of the case:

Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners.

Conclusion:

- a) In the present case, Bohan is a nominal partner. Even if he is not entitled to share the profits of the firm, he is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.
- b) In case, Karan has filed the suit against firm, the answer would remain same.

Chapter: 5

The Companies Act, 2013

Question 1

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

Answer

Doctrine of Indoor Management:

- 1) According to the “doctrine of indoor management”, 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.
- 2) This doctrine is an exception of the doctrine of “constructive notice” and is also popularly known as the Turquand Rule as related to the case of Royal British Bank vs Turquand.
- 3) Thus, the doctrine of indoor management aims to protect outsiders against the company.

The doctrine of Indoor management has limitations of its own. It is not applicable to the following cases:

- a) Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has a notice, whether actual or constructive, of the irregularity.
- b) Suspicion of Irregularity: The doctrine of indoor management will not protect those persons who behave negligently. 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 affect a transaction, but it cannot apply to forgery, which must be regarded as a nullity.

Question 2

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

Answer

As per the provisions of the Companies Act, 2013, any company in which not less than 51% of the paid-up share capital is held by:

- Central Government, or
- State Government, or
- partly by the Central Government and partly by one or more State Governments. This provision also includes a company which is a subsidiary company of a government company.

Facts of the case:

SK Infrastructure limited has a paid-up share capital divided into 600000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra.

Conclusion:

In the present case, 2,00,000 equity shares of the company are held by the Central Government, and 1,20,000 equity shares are held by the Government of Maharashtra out of the 6,00,000 equity shares, which is 53.33%. So, it is more than 51% of paid-up share capital. Hence, SK Infrastructure Limited will be treated as a Government Company.

Question 3

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 consideration the provisions of the Companies Act, 2013, answer the question given below.

- a) **If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?**
- b) **If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?**

Answer

As per the provision of the Companies Act, 2013, only a natural person who is an Indian citizen, whether resident in India or otherwise, shall be eligible to incorporate a One Person Company or shall be a nominee in a One Person Company. For the purpose of this Rule, a resident in India means a person who has stayed in India for not less than 120 days during the immediately preceding financial year.

Facts of the case:

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.

Conclusion:

- a) No, it is not mandatory for Navita to withdraw her nomination in the said OPC as she is already an Indian citizen. It is not mandatory for her to be a resident in India.
- b) Navita can continue her nomination in the said OPC after her marriage as it is not mandatory for Navita to be a resident in India.

Question 4

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

actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan.

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

Answer

- 1) As per the Doctrine of Indoor Management, 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.
- 2) What happens internally 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.
- 3) The company could escape creditors by denying the authorizing of officials to act on its behalf if this doctrine would not have existed.
- 4) This doctrine is an exception of the doctrine of “constructive notice” and is also popularly known as the Turquand Rule as related to the case of Royal British Bank vs Turquand.

Facts of the case:

Sound Syndicate Ltd., a public company, its articles of Association empower the managing agents to borrow both short and long term loans on behalf of the company. Mr Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company, for a loan of ₹25,00,000 in the 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 has been actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan.

Conclusion:

Easy Finance Ltd., being an outsider to the company, need not enquire whether the necessary resolution was passed properly. Even if Sound Syndicate Ltd. claims that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

Question 5

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

Answer

- 1) Doctrine of ultra-vires: The meaning of the term “ultra-vires” is “beyond power”. The legal phrase “ultra-vires” is applicable only to acts done in excess of the legal powers of the company.
- 2) It is a fundamental rule of the company law that the objects of a company as stated in its Memorandum of Association can be departed from only to the extent permitted by the Act. [Case Law related to Doctrine of Ultra Vires – Ashbury Railway Company Ltd. Vs. Riche].
- 3) In consequence, any act done or a contract made by the company, which is beyond the powers not only of the directors but also of the company, is void and inoperative in law and is not binding on the company.
- 4) On this account, a company can be restrained from using its funds for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different

from the one it is authorised to carry on.

- 5) The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction nor can it sue on it. Since the Memorandum of Association is a public document, it is open to public inspection. Therefore, when a person deals with a company, such a person is deemed to know about the powers of the company. If a person enters into a transaction which is ultra vires to the company, such a person cannot enforce it against the company.
- 6) An act, which is ultra vires, cannot be even ratified by the shareholders of the company.

Question 6

What do you mean by “Companies with a charitable purpose” under the Companies Act, 2013? Mention the conditions of the issue and revocation of the licence of such a company by the government.

Answer

As per the provision 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 a company intends to apply its profit in:

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

Examples of a Section 8 company: FICCI, ASSOCHAM, National Sports Club of India, CII, etc.

Power of Central Government to issue the license:

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

Revocation of license:

- 1) The Central Government, may by an order, revoke the licence of the company if the company contravenes any of the requirements or the conditions of this sections, subject to which a license is issued.
- 2) 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 a written notice of its intention to revoke the license and an opportunity of being heard in the matter to such Section 8 company.

Question 7

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 Associated company as per the provisions of the Companies Act, 2013?

Answer

As per the provision of the Companies Act, 2013, An associated 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 voting power or control of or participation in business decisions under an agreement.

Facts of the case:

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.

Conclusion:

ABC Ltd. has allotted equity shares with a voting right to XYZ ltd. of ₹15 crores, which is less than requisite control of 20% of total voting power (i.e., ₹100 crores) to have a significant influence on XYZ ltd. Since the said requirement does not comply, therefore ABC Ltd. and XYZ ltd. are not associate companies. Holding/allotment of non- convertible debenture has no relevance for ascertaining significant influence.

Question 8

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

Answer

As per the provision of the Companies Act, 2013, Section 8 deals with the formation of companies that are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment etc.

Such a company intends to apply its profit in: -

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

Facts of the case:

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.

Conclusion:

Hence, a company that is registered as a section 8 company 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 the dividend. Thus, the contention of members is incorrect.

Question 9

Mike Limited company incorporated in India having a Liaison office in Singapore. Explain in the detailed meaning of Foreign Company and analysis. on whether Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore as per the provisions of the Companies Act, 2013?

Answer

As per the provision of the Companies Act, 2013, the foreign company means any company or body corporate incorporated outside India which:

- ✓ Has a place of business in India whether by itself or through an agent, physically or through electronic mode: and
- ✓ Conducts any business activity in India in any other manner.

Facts of the case:

Mike Limited company incorporated in India having a liaison office in Singapore. Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore.

Conclusion:

Mike Limited is a company incorporated in India; hence, it cannot be called a foreign company. Even though its liaison office was officially in Singapore, it would not be called a foreign company.

Question 10

“The Memorandum of Association is the charter of the company”. Discuss. Also, explain in brief the contents of the Memorandum of Association.

Answer

As per the provision of the Companies Act, 2013, the Memorandum of Association is the Charter of a company. 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.

Content of Memorandum of Association:

- 1) **Name Clause:** The name of the company with the last word ‘Limited’ in the case of a public limited company and or the last words ‘Private Limited’ in the case of a private limited company.
- 2) **Registered Office Clause:** The state in which the registered office of the company is to be situated.
- 3) **Object Clause:** The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
- 4) **Liability Clause:** The liability of members of the company, whether limited or unlimited and also state-
 - i) In the case of a company limited by shares: The liability of members is limited to the amount unpaid on the shares held by them.
 - ii) In case of a company limited by guarantee: The amount up to which each member

undertakes to contribute:

- ✓ to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be;
 - ✓ to the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves.
- 5) **Capital Clause:** The amount of authorised capital divided into shares of a fixed amount and the number of shares with the subscribers to the memorandum have agreed to take which shall not be less than one share. A company not having share capital need not have this clause.
- 6) **Association Clause:** Every subscriber to the memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

Question 11

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

Elucidate.

Answer

As per the Doctrine of Corporate Veil, a company is identified separately from the members of the company.

However, the corporate veil can be lifted, which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard to the realities behind the legal facade. Where the Courts ignore the company's identity and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.

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:

- 1) **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell in order to determine the true character of the company, i.e., whether it is a friend or co-enemy. [Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.]
- 2) Where a corporate entity is used to evade or circumvent tax, the corporate veil may be lifted by the court in order to find out the true purpose of incorporating such a company. [Dinshaw Maneckjee Petit]
- 3) Where companies form other companies as their subsidiaries to act as their agent. Here, the court will lift the corporate veil of the subsidiaries in order to find out the true beneficiary. [Merchandise Transport Limited vs. British Transport Commission]
- 4) A company formed to circumvent the welfare of employees. [Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd.]
- 5) Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent the law, to defraud creditors or to avoid legal obligations. [Gilford Motor Co. vs Horne]

Question 12

Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 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 the above three companies, namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd. if it controls the composition of directors of Popular Products Ltd.? State the related provision in favour of your answer.

Answer

As per the provision of the Companies Act, 2013, a subsidiary company means a company in which a holding company:

- 1) Controls the composition of the Board of Directors, or
- 2) Exercises or controls more than one-half of the total voting power either on its own or together with one or more of its subsidiary companies.

Facts of the case:

Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 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 the above three companies, namely Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd

Conclusion:

In the present case, the total share capital of Popular Products Ltd. is ₹20 crores, comprised of 12 Lakh equity shares and 8 Lakh 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, holds 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.

Question 13

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

Answer

Company Limited by Guarantee: As per the provision of the Companies Act, 2013, a 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 it's being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond

that stipulated sum.

Similarities and dissimilarities between the Guarantee company and the company having a share capital:

- 1) 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.
- 2) 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 the 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 lifetime or during its winding up.

Question 14

Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

Answer

There was a famous case law of Gilford Motor Co. vs. Horne, which was based on the concept of Lifting of Corporate Veil. In the case of Gilford Motor Co. Vs. Horne, it was decided by the court that if the company is formed simply as a mere device to evade legal obligations, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

Facts of the case:

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

Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement.

Conclusion:

In the present case, Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

Question 15

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

- a) Whether Jagannath Oils Limited is required to reduce the number of members.
- b) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?

Answer

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

- i) restricts the right to transfer its shares;
- ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

Provided further that:

- i) persons who are in the employment of the company; and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- iii) prohibits any invitation to the public to subscribe for any securities of the company.

Facts of the case:

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

Conclusion:

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

required to reduce the number of members before converting it into a private company.

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

Question 16

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

Discuss what powers can be exercised by the central government against ABC club, in such a case?

Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

Facts of the case:

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

Conclusion:

Since ABC Club was a Section 8 company and had started violating the objects of its objective clause, the following powers can be exercised by the Central Government:

- i) The Central Government, may by an order, revoke the licence of the company if the company contravenes any of the requirements or the conditions of this sections, subject to which a license is issued. But before such revocation, the Central Government must give a written notice of its intention to revoke the license and an opportunity of being heard in the matter to such Section 8 company.
- ii) Where a licence is revoked, the Central Government may, 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 Section 8 company. 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 the Central Government is satisfied that the company registered under this section should be amalgamated with another Section 8 company having similar

objects, then the Central Government may 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 17

No Limit Private Company is incorporated as unlimited company having share capital of ₹10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against No Limit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

Answer

As per the provisions of the Companies Act, 2013, an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. As long as the company is a going concern, the liability on the shares is the only liability which can be enforced by the company. But, at the time of winding up of the company, the official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

Facts of the case:

No Limit Private Company is incorporated as unlimited company having share capital of ₹10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against No Limit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder.

Conclusion:

On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues from Mr. Innocent, even if the company is an unlimited company. Mr. Innocent is liable up to his share in the share capital. His unlimited liability will arise at the time of winding up of company.

Chapter : 6

Negotiable Instruments Act, 1881

Question 1

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

Answer

As per the provisions of the Negotiable Instruments Act, 1881, once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. Also, relevant provisions of the Negotiable Instruments Act, 1881 specify absolute liability of the drawer of the cheque for the commission of an offence under the Act. It shall not be a defence in a prosecution for an offence that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Facts of the case:

Vinay drew a cheque in favour of Vikas. After having issued the cheque, Vinay requested Vikas not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Vikas.

Conclusion:

In the present case, the act of Vinay, i.e., his request to stop payment, constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 2

C issues a cheque for ₹55,000 in favour of D. C has a sufficient amount in his account with the Bank. The cheque was not presented within a reasonable time to the Bank for payment, and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether D can recover the money from C?

Answer

As per the provisions of the Negotiable Instruments Act, 1881, the cheque should be presented to Bank within a reasonable time. If a cheque is not presented within a reasonable time, meanwhile, the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within a reasonable time.

Further, in determining what a reasonable time is, regard shall be had to (a) the nature of the instrument, (b) the usage of trade and of bankers, and (c) facts of the particular case. The drawer will get a discharge, but the holder of the cheque will be treated as the creditor of the bank in place of the drawer. He "Will be entitled to recover the amount from Bank.

Facts of the case:

C issues a cheque for ₹55,000 in favour of D. C has a sufficient amount in his account with the Bank. The cheque was not presented within a reasonable time to the Bank for payment, and the Bank, in the meantime, became bankrupt.

Conclusion:

In the above case, the drawer, i.e. C, has suffered the damage as the cheque was not presented by D within a reasonable time. Hence, C will be discharged, but D will be the creditor of the bank for the amount of cheque and can recover the amount from the bank.

Question 3

M drew a cheque amounting to ₹2 Lakhs payable to N and subsequently delivered to him. After receipt of the cheque, N endorsed the same to C but kept it in his safe locker. After some time, N died, and P found the cheque in N's safe locker. Does this amount to endorsement under the Negotiable Instruments Act, 1881?

Answer

As per the provisions of the Negotiable Instruments Act, 1881, a negotiable instrument payable to the order is negotiable by the holder by the endorsement and delivery thereof.

Facts of the case:

M drew a cheque amounting to ₹2 Lakhs payable to N and subsequently delivered to him. After receipt of the cheque, N endorsed the same to C but kept it in his safe locker. After some time, N died, and P found the cheque in N's safe locker.

Conclusion:

In the present case, P does not become the holder of the cheque as the negotiation was not completed by the delivery of the cheque to him.

Question 4

Explain the concept of 'Noting', 'Protest' and 'Protest for better security as per the Negotiable Instruments Act, 1881.

Answer

- 1) **Noting:** When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.
- 2) **Protest:** When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such a certificate is called a protest.
- 3) **Protest for better security:** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused, may with a reasonable time, cause such facts to be noted and certified as aforesaid. Such a certificate is called a protest for better security.

Question 5

Chandan is the payee of an order cheque. Prabhat steals the cheque and forges Chandan's signature, and endorses the cheque in his own favour. Prabhat then further endorses the cheque to Mohit, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881.

Answer

As per the provisions of the Negotiable Instruments Act, 1881, the forgery confers no title, and a holder acquires no title to a forged instrument. Thus, where a signature on the negotiable instrument is forged, it becomes a nullity. Since a forged instrument is a nullity, the property in such an instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified.

In the case of forged endorsement, the person claiming under the forged endorsement, even if he is a purchaser for value and in good faith, cannot acquire the rights of a holder in due course.

Facts of the case:

Chandan is the payee of an order cheque. Prabhat steals the cheque and forges Chandan's signature, and endorses the cheque in his own favour. Prabhat then further endorses the cheque to Mohit, who takes the cheque in good faith and for valuable consideration.

Conclusion:

In the present case, the cheque further endorsed to Mohit by Prabhat is not valid. Therefore, Mohit acquires no good title on the cheque.

Question 6

State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange.

Answer

As per the provisions of the Negotiable Instruments Act 1881, the maturity of a note or bill is the date on which it falls due.

Rules of Maturity of a Bill of Exchange:

- 1) Days of grace: A note or bill, which is not expressed to be payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable. Thus, a time instrument payable after sight is allowed three days grace period.
- 2) Calculation of maturity of bill or note payable at a stated number of months:
 - ✓ In calculating the date at which a promissory note or bill of exchange, made payable at a stated number of months after date or after sight or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance or the event happens or where the instrument is a bill of exchange made payable at a stated number of months after sight and has been accepted for honour with the day on which it was so accepted.
 - ✓ If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.
- 3) Maturity day is a holiday: When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding

Question 7

Manish owes money to Gaurav. Therefore, he makes a promissory note for the amount in favour of Gaurav; for safety, he cuts the note in half and posts one-half to Gaurav. He then changes his mind and calls Gaurav to return half of the note which he had sent. Gaurav requires Manish to send the other half of the promissory note. Decide how the rights of the parties are to be adjusted?

Answer

As per the provisions of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, whether actual or constructive. Delivery of the instrument means the delivery of the whole of the instrument, not just the part of it. Delivery of half of the instrument cannot be treated as the constructive delivery of the whole instrument.

Facts of the case:

Manish owes money to Gaurav. Therefore, he makes a promissory note for the amount in favour of Gaurav; for safety, he cuts the note in half and posts one-half to Gaurav. He then changes his mind and calls Gaurav to return half of the note which he had sent. Gaurav requires Manish to send the other half of the promissory note.

Conclusion:

In the present case, the claim of Gaurav to have the other half of the promissory note is not valid. Manish's demand for the return of the first half of the promissory note is valid. Manish has the right to not send the other half of the promissory note to Gaurav.

Question 8

Venkat executed promissory note in favour of Raman for ₹45 Lakhs. The amount was payable hundred days after sight. Raman presented the promissory note for sight on 4th May 2021. Ascertain the date of maturity of the promissory note with reference to the relevant provisions of the Negotiable Instruments Act, 1881.

Answer

As per Section 24 of the Negotiable Instruments Act 1881, in calculating the date at which a promissory note or bill of exchange was made payable at a certain number of days after the date or after sight or after a certain event is at maturity, the day of the date or of presentment for acceptance or sight or of protest for non-acceptance or on which the event happens shall be excluded.

Also, as per Section 25 of the Negotiable Instruments Act 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Facts of the case:

Venkat executed a promissory note in favour of Raman for ₹45 Lakhs. The amount was payable a hundred days after sight. Raman presented the promissory note for sight on 4th May 2021.

Conclusion:

Date of presenting promissory note for sight = 4th May 2021. Date of maturity:

100th day after 4th May 2021 = 12th August 2021.

Adding 3 days of grace to 12th August 2021 = 15th August 2021 (Independence Day – National Holiday).

So, the date of maturity will be 14th August 2021.

Question 9

A promissory note that three months after, A will pay ₹10,000 to B or his order for value received. It is to be noted that no rate of interest has been stipulated in the promissory note. The promissory note fell due for payment on 01.09.2019 and was paid on 31.10.2019 without any interest. Explaining the relevant provisions under the Negotiable Instruments Act, 1881, state whether B shall be entitled to claim interest on the overdue amount?

Answer

As per the provisions of the Negotiable Instruments Act, 1881, the payment of the amount due on instruments must be made to the holder with interest at the specified rate expressly made payable on a promissory note or a bill of exchange. Where no interest rate is specified in the instrument, interest on the amount due shall be calculated at the rate of 18% per annum from the date at which the instrument ought to have been paid until the realization of such amount.

Facts of the case:

A promissory note specifies that three months after, A will pay ₹10,000 to B or his order for value received. It is to be noted that no rate of interest has been stipulated in the promissory note. The promissory note fell due for payment on 1.09.2019 and was paid on 31.10.2019 without any interest.

Conclusion:

In the present case, since no rate of interest has been stipulated in the promissory note, A shall pay the interest rate of 18% p.a. to be calculated from 1.09.2019 to 31.10.2019

Question 10

Mr Harsha donated ₹50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on, he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a “stop payment” instruction to his bankers, and the cheque was not honoured by the bank as per his instruction. The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr Harsha about the course of action available under the Negotiable Instruments Act, 1881.

Answer

As per the provisions of the Negotiable Instruments Act, 1881, once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such apers on shall be deemed to have committed an offence. A ‘stop payment’ instruction is equivalent to the dishonour of the cheque.

But, it has also been provided that a cheque given as a gift or donation shall not be covered under this provision.

Facts of the case:

Mr Harsha donated ₹50,000 to an NGO by cheque for sponsoring the education of one child for one

year. Later on, he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a “stop payment” instruction to his bankers, and the cheque was not honoured by the bank as per his instruction. The NGO has sent a demand notice and threatened to file a case against Harsha.

Conclusion:

In the present case, Mr Harsha has given the cheque to the NGO as a donation. So, if a cheque is given as a donation, and the drawer gave a “stop payment” instruction to the bank, it shall not be deemed to be an offence. So, Mr Harsha’s action of giving a “stop payment” instruction is not an offence.

Question 11

Explain the terms ‘Acceptance for Honour’ and ‘Drawee in case of need’ as per the Negotiable Instruments Act, 1881.

Answer

Acceptance for Honour: As per the provisions of the Negotiable Instruments Act, 1881, the person who accepts the bill for the honour of any other person is called as an acceptance for the honour.

- ✓ The bill must have been noted for non-acceptance. The acceptance is given for the honour of any party already liable under the bill by any person who is already not liable under the bill, with the consent of the holder of the bill. The acceptance must be in writing on the bill.
- ✓ He is liable to pay the amount of the bill if the drawee does not pay on maturity.

Drawee in case of need: As per the provisions of the Negotiable Instruments Act, 1881, the name of any person may be given in a bill as ‘drawee in case of need’.

- ✓ His liabilities arising on the bill are not accepted by the drawee in the bill.
- ✓ The bill is not dishonoured until it has been dishonoured by the drawee in case of need.

Question 12

Examining the provisions of the Negotiable Instruments Act, 1881, distinguish between a 'Bill of Exchange' and a 'Promissory Note'.

Answer

Distinction between a Promissory Note and a Bill of Exchange: The distinctive features of these two types of negotiable instruments are tabulated below: -

Sl. No.	Promissory Note	Bill of Exchange
1)	It contains a promise to pay	It contains an order to pay
2)	The liability of the maker of a note is primary and absolute	The liability of the drawer of a bill is secondary and conditional. He would be liable if the drawee, after accepting the bill fails to pay the money due upon it provided notice of dishonor is given to the drawer within the prescribed time.

3)	It is presented for payment without any previous acceptance by maker	If a bill is payable sometime after sight, it is required to be accepted either by the drawee himself or by someone else on his behalf, before it can be presented for payment.
4)	The maker of a promissory note stands in immediate relationship with the payee and is primarily liable	The maker or drawer of an accepted bill stands in immediate relationship with the acceptor and the payee
	to the payee or the holder.	
5)	It cannot be made payable to the maker himself, that is the maker and the payee cannot be the same person	In the case of bill, the drawer and payee or the drawee and the payee may be the same person.
6)	In the case of a promissory note there are only two parties, viz. the maker (debtor) and the payee (creditor).	In the case of a bill of exchange, there are three parties, viz., drawer, drawee and payee, and any two of these three capacities can be filled by one and the same person.
7)	A promissory note cannot be drawn in sets	The bills can be drawn in sets
8)	A promissory note can never be conditional	A bill of exchange too cannot be drawn conditionally, but it can be accepted conditionally with the consent of the holder. It should be noted that neither a promissory note nor a bill of exchange can be made payable to bearer on demand.

Question 13

Explain the provisions of the law relating to ‘ambiguous’ and ‘inchoate’ instruments under the Negotiable Instruments Act, 1881.

A signs, as maker, a blank stamped paper and gives it to ‘B’, and authorises him to fill it as a note for ₹500, to secure an advance which ‘C’ is to make to ‘B’. ‘B’ fraudulently fills it up as a note for ₹2,000. payable to ‘C’, who has in good faith advanced ₹2,000. Decide, with reasons, whether ‘C’ is entitled to recover the amount, and if so, up to what extent?

Answer

Ambiguous Instrument: An instrument which can be formed either as a promissory note or bill of exchange is called an ambiguous instrument (Section 17).

The cases where the instruments will be treated as ambiguous are, “Where in a bill the drawer and the drawee are the same persons or where the drawee is a fictitious person, or a person not competent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a

promissory note The nature of the instrument will be determined by the holder.

Inchoate Instruments (Section 20):

- 1) An inchoate instrument is one which is an incomplete instrument, for example, one not specifying the amount payable or leaving blank the name of the payee or one without date.
- 2) When a person gives to another person a blank signed and stamped paper, the latter may change it into a negotiable instrument by filling the blanks.
- 3) When the instruments is so filled up, the signor becomes liable in the capacity in which he signs.
- 4) The liability of the signer is restricted to the amount stated therein but no exceeding the amount covered by the stamp.
- 5) No person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

Provision:

According to Section 20, when are person signs and delivers to another a paper stamped. In accordance with the law relating to the instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby permits prima-facie authority to the holder to complete the instrument of: any amount mentioned therein and not exceeding the amount covered by the stamps. The person who signed the instrument will be liable for it. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid.

The principle followed by Section 20 is that a person who gives another possession of his signature on a blank stamped paper allows his agent to fill it up and give to the world the instrument as accepted by him Principle of estoppel is followed.

Fact of the case:

A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for ₹500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for ₹2,000. payable to 'C', who has in good faith advanced ₹2,000. Decide, with reasons, whether 'C' is entitled to recover the amount, and if so, up to what extent?

Conclusion:

In the given problem, A is estopped from setting up B is fraud and V is entitled to recover ₹2000/- from A' because C has obtained it as a holder in due course. This liability does no stand of a person other than the holder in due course C as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded put it is necessary that the sum ought not to exceed the amount covered by the stamp.

Question 14

Point out the differences between a “Cheque” and a “Bill of Exchange” under the Negotiable Instruments Act, 1881.

Answer

Basis	Cheque	Bill of Exchange
1) On whom the instrument must be drawn	It must be drawn only on a banker.	It can be drawn on any person including a banker.
2) Acceptance.	Acceptance is not needed.	A bill payable after sight must be accepted.
3) Payable on	The amount is always payable on demand.	The amount may be payable on demand or after a specified period.
4) Crossing.	A cheque may be crossed.	Crossing of a bill of exchange is not possible.
5) Days of grace.	Cheques are not entitled to days of grace.	Bills are entitled to three days of grace.
6) Notice of dishonour.	No notice of dishonour is required.	Notice of dishonour is needed to hold the parties liable thereon.
7) Noting or Protesting.	In case of dishonour no noting or protesting is to be done.	To establish dishonour a bill is to be noted or protested.
8) Stamping	Stamping is not required	Bill of exchange needs to be stamped

Question 15

When is presentment of an instrument not necessary under the Negotiable Instruments Act?

Answer

When Presentment for Payment Unnecessary (Sec. 76): The presentment for payment is dispensed under the following circumstances. The placement of an instrument for its payment is known as Presentment for payment. Such a presentment must be made:

- 1) To the maker.
- 2) To the drawee or acceptor

Time of Presentment for Payment:

- 1) It should be made during the usual hours of business.
- 2) A bill made payable at a specific period after date or sight must be presented for payment only at maturity.
- 3) An instrument payable on demand must be presented for payment within a reasonable time.
- 4) An instrument payable by instalment must be presented on third day after the date of payment of each instalment.

Place of Presentment for Payment:

- 1) If place is specified, the presentment is to be made at that specified place.
- 2) If place is not specified then:
 - ✓ a) at the place of business; or
 - ✓ b) if there is no place of business at the residence.

If no place is specified, and no fixed place of business or residence exists then the presentment may be made wherever found.

Presentment for payment when excused:

- 1) Where the maker, drawee or acceptor intentionally prevents the presentment of the instrument.
- 2) Where the instrument is payable at his place of business and the place is closed during the usual business hours on the due date.
- 3) Where though the place is open but there is no person to make the payment.
- 4) Where he has promised to pay notwithstanding non-presentment.
- 5) Where the presentment is expressly or impliedly waived by the party entitled to presentment. For example, if he makes a part payment of the amount due to the instrument or promises to pay the amount thereon in whole or in part.
- 6) As against the drawer, where he could not have suffered any damage by non-presentment.
- 7) Where the drawee is a fictitious person or one incompetent to contract, e.g., minor.
- 8) Where drawer and the drawee are the same person, e.g., in the case of a promissory note or an accommodation bill.
- 9) Where the bill is dishonoured by non-acceptance.
- 10) Where presentment has become impossible.

Question 16

What are the penalties prescribed in the Negotiable Instruments Act, 1881 in case of dishonour of a Cheque for insufficiency of funds in the account of the person issuing the Cheque? What steps the payee should take for making the drawer liable for this offence?

Answer

Section 138 of the Negotiable Instruments [added by the (Amendment) Act, 1988 and now amended by Negotiable Instruments [Amendment; Act, 2002] states the criminal penalties in the event of dishonour of cheques for insufficiency of funds. The drawer under Section 138, may be punished with imprisonment upto 2 years or with a fine upto twice the amount of the cheque or with both. To constitute, the said offence, certain conditions are to be fulfilled. These are:

- 1) The cheque should have been presented within 3 months from the date on which it is drawn or within the period of validity, whichever is earlier.
- 2) The drawer is liable only if he fails to make the payment within 15 days of such notice period.
- 3) The payee or holder in due course of the cheque should have been given notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

Complaint within one month: The payee or the holder in due course of the cheques dishonoured should have made a complaint within one month of cause of action arising out. If the cheque is drawn as a gift no offence will be committed, if the said cheque is returned by the bank unpaid.

Chapter : 7

Limited Liability Partnership Act, 2008

Question 1

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

Answer

As per the provision of the Limited Liability Partnership Act , 2008:-

1. Every LLP shall have atleast two designated partners who are individuals, and atleast one of the shall be a resident in India.
2. Resident in India means a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.
3. If in LLP ,all the partners are body corporates or one or more partners are individuals and body corporates, at least two individuals, who are partners of such LLP or nominees of such body corporates, shall act as designated partners.

Question 2

State the circumstances in which the Tribunal may order for the winding up of an LLP.

Answer

As per the provision of the Limited Liability Partnership Act, 2008, circumstances in which the Tribunal may order for the winding up of an LLP are: -

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

Question 3

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

Answer

As per the provision of the Limited Liability Partnership Act, 2008, LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

- 1) Limited Liability: Every partner of an LLP is the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
- 2) The 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 to form commercially efficient entity suited to their requirements.

Question 4

What are the steps for incorporating an LLP?

Answer

1. Name reservation:
 - a) The first step in the incorporation of an LLP is to reserve the name of the LLP.
 - b) The applicant has to file an e-form 1 with the Registrar to reserve the name of the LLP.
2. Incorporation:
 - a) After reserving the name, the applicant has to file e-form 2 for incorporating the LLP.
 - b) Details contained in e-form 2:
 - Details of LLP proposed to be incorporated.
 - Details of partners and designated partners.
 - Consent of such partners and designated partners to act as partners and designated partners.
3. LLP Agreement:
 - a) An LLP agreement shall be mandatorily executed as per the LLP Act, 2008.
 - b) The LLP agreement shall be filed in e-form 3 within 30 days of the incorporation of the LLP.

Question 5

Explain any four features of a Limited Liability Partnership.

Answer

As per the provision of the Limited Liability Partnership Act, 2008, features of LLP are: -
(Any four features)

- 1) **LLP is a body corporate:** LLP is a separate legal entity, and all assets and liabilities of LLP belong to LLP, not to its partners.
- 2) **Perpetual Succession:** LLP is created by the process of law, and it can be destroyed by the process of law only. Death, insanity, etc., of its partners cannot affect the existence or continuity of LLP.
- 3) **Mutual Agency:** Partners of LLP are the agents of LLP only, not of other partners. Acts done by partners are bounded on LLP only, not on other partners directly.
- 4) **Formation of Agreement:** Agreement between partners under LLP Act decides mutual rights and duties of the partners. In the absence of agreement, mutual rights and duties shall be governed by provisions of the Limited Liability Partnership Act, 2008.
- 5) **Common Seal:** It is not mandatory for a company to have a common seal. If there is a common seal of LLP, it shall be under the custody of some responsible officer. The common seal shall be affixed in the presence of at least two designated partners of LLP.
- 6) **Limited Liability:** Since every partner is an agent of LLP only, the liability of partners shall be limited to their agreed contribution in LLP.

- 7) **Management of Business:** Partners of LLP are entitled to manage the business. Only designated partners are responsible for legal compliances.
- 8) **Minimum and Maximum number of Partners:** Minimum number of designated partners should be 2, one of whom must be a resident of India. There is no limit to the maximum number of partners in LLP.
- 9) **Business for profits only:** While forming LLP, the intention should be to earn profits. LLP cannot be formed for charitable or non-economic purposes.
- 10) **Investigation:** The Central Government has the powers to order the investigation on LLP and its affairs by appointing a competent authority.
- 11) **Compromises or Arrangements:** Any compromises or arrangements, including merger and amalgamation, shall be in accordance with the provisions of the LLP Act, 2008.
- 12) **Conversion into LLP:** A firm, private or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of the LLP Act, 2008.
- 13) **E-filing of Documents:** Every form or application, or document needed to be filed, shall be filed in a computer-readable electronic form on the website www.mca.gov.in. The documents filed must be authenticated by a partner or designated partner of LLP by the use of the electronic or digital signature.
- 14) **Foreign LLP:** Foreign LLP is LLP incorporated outside India, which established a place of business within India. It can become a partner in an Indian LLP.

Question 6

State the circumstances under which an LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Answer

- 1) As per the provisions of the Limited Liability Partnership Act, 2008, in case of fraud, an act carried out by a LLP, or any of its partners, with an intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, the liability of the LLP and such partners shall be unlimited for all or any of the debts or other liabilities of the LLP.
However, if the LLP proves that such act, which is carried out by a partner, is carried out without the knowledge or authority of the LLP, then only such partner shall be liable.
- 2) Punishment: Every person, who was knowingly a party to such fraud, shall be punishable with:
 - Imprisonment for a term which may extend to 5 years, and
 - With fine which shall not be less than ₹50,000 but which may extend to ₹5 Lakhs.
- 3) If an LLP or any of its partner or its designated partner or its employee has conducted the affairs of the LLP in a fraudulent manner, then such LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct (without any prejudice to criminal proceedings). However, such LLP shall not be liable if any such partner or designated Partner or employee has acted fraudulently without knowledge of the LLP.

Question 7

Examine the Concept of LLP.

Answer

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 organizing their internal structure as a traditional partnership.

Concept of the Limited Liability Partnership:

- ✓ The LLP can continue its existence irrespective of changes in partners. It is capable of entering into a contract and holding property in its own name.
- ✓ The LLP is a separate legal entity, is liable to the full extent of its assets, but the liability of the partners is limited to the agreed contribution in the LLP.
- ✓ In an LLP, no partner is liable on account of the independent or unauthorized actions of other partners.
- ✓ Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners.
- ✓ Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure', an LLP is called a hybrid between a company and a partnership.

Question 8

State the rules regarding the registered office of a Limited Liability Partnership (LLP) and change there in as per provisions of the Limited Liability Partnership Act, 2008.

Answer

As per provisions of the Limited Liability Partnership Act, 2008:

- 1) Every LLP shall have a registered office to which communications and notice may be addressed and where they shall be received.
- 2) A document may be served on an LLP or partner or designated partner by a registered post or by any other manner at the registered office of the LLP.
- 3) An LLP may change the place of its registered office by filing a notice of such change with the Registrar in such form and manner, as may be prescribed.
- 4) If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of ₹500 for each day during which the default continues, subject to a maximum of ₹50,000 for the limited liability partnership and its every partner.