

Suggested Answers For Mock Test No. 2 Held on 30/04/2025

Question No. 1 is compulsory.

Attempt any four questions from the remaining five questions.

Working Notes should form part of the answer.

1)a)i) Ankit entered into a contract with Mehul to deliver 500 bags of cement at Mehul's warehouse on or before 25th March. On 24th March, Ankit loaded the goods and reached the warehouse, but found it closed. He waited for 4 hours, contacted Mehul on call, and also emailed him stating that the goods were ready for delivery, but Mehul neither responded nor made any arrangements to receive the goods. Ankit returned with the goods and refused to deliver them later, stating that he had discharged his obligation under the contract.

Mehul filed a suit for non-performance. With reference to the provisions of the Indian Contract Act, decide: Whether Ankit has fulfilled his obligation under the contract? Is Mehul entitled to claim damages or specific performance? (4m)

Ans - Section 37 of the Indian Contract Act, 1872 lays down that the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of the Act.

An offer to perform is valid if: It is unconditional, Made at the proper time and place, The promisor is ready and willing to perform the whole of the contract.

If a valid tender (offer to perform) is made and is not accepted by the promisee, the promisor is discharged from liability.

In the given case, Ankit reached the agreed location before the due date. He waited for a reasonable time and made a sincere effort to contact Mehul. He was ready and willing to perform but Mehul was not present and did not make arrangements to receive the goods. Hence, Ankit made a valid offer to perform his obligation, which was not accepted by Mehul.

Ankit is discharged from his obligation under the contract. Mehul cannot claim damages or specific performance, as he failed to accept a valid offer of performance.

1)a)ii) Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ` 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with

Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar? (3m)

Ans - According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

1)b)i) Nolimit Private Company is incorporated as unlimited company having share capital of ` 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent? (4m)

Ans - Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of the above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even though the company is an unlimited company. Mr. Innocent is liable for upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

1)b)ii) Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013. (3m)

Ans - As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) –

- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

In the given case, Mr. R is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Hence, Mr. R is eligible to incorporate an OPC.

Also, even though Mr. S's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Hence, S's name cannot be given as nominee in the memorandum.

1)c)i) Explain the kinds of partnership as per Indian Partnership Act, 1932? (4m)

Ans – The various kinds of partnership are discussed below:

1. Partnership at will according to Section 7 of the Act, partnership at will is a partnership when:

1. no fixed period has been agreed upon for the duration of the partnership; and
2. there is no provision made as to the determination of the partnership.

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

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

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

2. Partnership for a fixed period: Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

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

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

4. General partnership: Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership. In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general partnership. General partnership is different from limited liability partnership.

1)c)ii) Can a partner gets interest on capital contribution provided by the partner? (2m)

Ans – It is the right of a partner, Interest on Capital [Section 13(c)]: The following elements must be there before a partner can be entitled to interest on moneys brought by him in the partnership business:

- (i) an express agreement to that effect, or practice of the particular partnership or
- (ii) any trade custom to that effect; or
- (iii) a statutory provision which entitles him to such interest.

2)a)i) Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok.

(4m)

Ans - As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

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

Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.

Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him. Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

2)a)ii) 2)a)ii) P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. Explain whether the sale and sub sale are valid? (3m)

Ans - "In the case of a sale by auction, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and at that moment, the ownership (property in goods) passes to the buyer." This is subject to any contrary intention. But unless specifically agreed otherwise, ownership transfers immediately on the fall of the hammer.

Before cheque clearance, Q sells the car to R. It is held that ownership passed to Q at the fall of the hammer, and R gets a valid title. The clause saying "ownership shall not pass until cheque clearance" is interpreted not as a binding condition precedent, but a protective clause in case of dishonor.

Q was allowed to take the car away. This shows that the seller treated the sale as complete, transferring not just possession, but (implicitly) ownership too. The risk and benefit also likely to passed to Q.

R purchased the car in good faith and without notice of the cheque clause.

Under Section 30(2) of the Sale of Goods Act (Sale by a buyer in possession), if the original buyer has possession with the seller's consent and resells, the sub-buyer gets a good title.

Hence the sale and sub sale both are valid

2)b) Explain contents of Memorandum of Association (7m)

Ans - Content of the memorandum: The memorandum of a company shall state—

a) the name of the company (**Name Clause**) with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act. The name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8

of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT). For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. [The Companies (Incorporation) Rules, 2014].

As per MCA notification dated 5th June, 2015, a Government company's name must end with the word "Limited". In the case of One Person Company, the words "One Person Company", should be included below its name.

b) the State in which the registered office of the company (**Registered Office clause**) is to be situated;

c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (**Object clause**);

If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

d) the liability of members of the company (**Liability clause**), whether limited or unlimited, and also state,—

- in the case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- in the 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; and

- to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

E) the amount of authorized capital (**Capital Clause**) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.

F) the detail of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take atleast one share, and shall write against his name, the number of shares taken by him.

In the case of OPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

2)c)i) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? (3m)

ii) What are the effects of registration of Limited Liability Partnership? (3m)

Ans – i) Partners (Section 5 of Limited Liability Partnership Act, 2008):

Any individual or body corporate may be a partner in a LLP.

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

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

ii) Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

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

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

3)a)i) A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? (4m)

Ans - Retirement / Death of Partner: Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property

of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

(i) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

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

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

(i) the 20% shares of profits (as per the partnership deed); or

(ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

3)a)ii) Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. (3m)

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

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

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

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

3)b)i) Mr. Arjun entered into a contract with MNO Pvt. Ltd., relying on oral representations made by the Managing Director. The contract involved appointing Arjun as a vendor for a type of

transaction that, according to the company's Articles of Association, required prior approval from both the Board and the shareholders.

However, no such approval was obtained. Later, the company refused to honour the contract, stating it was ultra vires the Articles. Arjun claims he had no knowledge of these internal requirements and wants to enforce the contract.

Examine whether Arjun can succeed in enforcing the contract against MNO Pvt. Ltd. (4m)

Ans - The Doctrine of Constructive Notice is a legal principle under the Companies Act, 2013, which states that a person dealing with a company is presumed to have knowledge of the contents of the company's public documents, such as the Memorandum of Association (MOA) and Articles of Association (AOA), since they are available for public inspection with the Registrar of Companies. This doctrine implies that even if a person has not actually read the documents, it will be presumed that they have. Therefore, they cannot plead ignorance of any limitations or conditions laid down in those documents.

In the given case, Arjun entered into a contract with MNO Pvt. Ltd. based solely on the Managing Director's oral assurances. However, the company's AOA required approval from both the Board and the shareholders for such a transaction. Since no such approval was obtained, the transaction is ultra vires the Articles.

According to the Doctrine of Constructive Notice, Arjun is presumed to have had notice of the company's Articles. He should have verified whether the MD had the authority to enter into such a contract on behalf of the company. Arjun cannot enforce the contract against MNO Pvt. Ltd., as he is deemed to have constructive notice of the internal limitations set out in the Articles. The company is not bound by a contract entered into without following the prescribed internal procedure.

3)b)ii) Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was ` 1.80 crore and paid up share capital was ` 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. (3m)

Answer - As per section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:

i) paid-up share capital of which does not exceed four crore rupees, and

ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

- a) a holding company or a subsidiary company;
- b) a company registered under section 8; or
- c) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of ` 1.80 crore, and paid-up share capital was ` 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

3)c)i) 'Agent cannot personally enforce, nor be personally bound by, contracts on behalf of the principal' however there are some exceptions to this general rule, explain any 3. (3m)

Ans - Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal: – When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.
- (2) Where the agent does not disclose the name of his principal or undisclosed principal; (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
- (3) Non-existent or incompetent principal: Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- (4) Pretended agent – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.
- (5) When agent exceeds authority- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

3)c)ii) Define an offer. How an offer is different from an invitation to offer?

(3m)

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

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

4)a)i) Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ` 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

(i) Whether the management of Shital Vidya Mandir has right to terminate the contract?

(ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?

(iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

(4m)

Ans - Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract. Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

4)a)ii) Arnav, a supplier, mistakenly delivered a consignment of goods to Bhavesh, believing him to be the authorized agent of Rohan & Co., the actual intended customer. Bhavesh, knowing he was not the intended recipient, accepted the goods and used them for his own business. Upon realizing the mistake, Arnav demanded payment from Bhavesh for the goods consumed. Bhavesh refused, arguing there was no contract between them.

With reference to the Indian Contract Act, 1872, decide whether Bhavesh is liable to pay Arnav. Support your answer with the appropriate provisions and principles. (3m)

Ans - According to Section 70 of the Indian Contract Act, 1872: “Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former.” This forms the basis of a quasi-contractual obligation, where no actual contract exists, but one party is unjustly enriched at the expense of the other.

Arnav delivered the goods lawfully, although mistakenly, to Bhavesh.

Arnav did not intend to act gratuitously, as he expected payment.

Bhavesh used the goods and derived benefit from them.

Even though there is no formal contract, Bhavesh, having accepted and used the goods, is obligated under quasi-contract to compensate Arnav for the value of the goods.

Conclusion:

Bhavesh is liable to pay Arnav under Section 70 of the Indian Contract Act. His enjoyment of goods without payment would result in unjust enrichment, which the law does not allow.

4)b) Explain section 76 of Negotiable Instrument Acts i.e Where presentment is not necessary and the instrument is dishonoured at the due date? (7m)

Ans - As per section 76 of Negotiable Instruments Act, 1881, No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

a) i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

- ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 - iv) if the instrument not being payable at any specified place, he cannot after due search be found;
- b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
- he makes a part payment on account of the amount due on the instrument,
 - or promises to pay the amount due thereon in whole or in part,
 - or otherwise waives his right to take advantage of any default in presentment for payment;
- d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

4)c) Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework? (6m)

Ans - 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.

5)a)i) Mr. Ramesh, a retailer, purchased 500 packets of packaged rice from M/s GrainGold Ltd., a wholesaler, to resell to customers through his grocery store. The packaging was sealed, and the label clearly mentioned “Premium Quality Rice – Sorted & Edible.” Upon opening and selling the rice, several customers complained of foul odor and presence of small insects. Mr. Ramesh himself discovered that the rice, while appearing fine externally, was not suitable for consumption due to poor storage.

When he approached GrainGold Ltd. for a refund, they argued that Mr. Ramesh had every opportunity to inspect the goods before resale, and since he didn’t raise any issue at the time of purchase, they were not responsible.

With reference to the Sale of Goods Act, 1930, examine whether Mr. Ramesh is entitled to a remedy and breach of which condition is happened in this case? (4m)

Ans - As per Section 16(2) of the Sale of Goods Act, 1930, there is an implied condition that goods shall be merchantable, i.e., fit for sale in the ordinary course of business when goods are bought by description from a seller who deals in such goods.

“Merchantable quality” means that goods must be saleable, free from latent defects, and must meet the ordinary expectations of a buyer.

A defect not discoverable on reasonable inspection, but which makes the goods unfit for the purpose for which they are normally bought, breaches this condition. The right to examine the goods does not absolve the seller from liability for latent defects.

In the present case: The rice was purchased in sealed, labeled packets – hence it was a sale by description, GrainGold Ltd. is a wholesaler dealing in rice – satisfying the requirement of a seller

dealing in goods of that description, The rice had hidden defects (odor, insects), which made it unfit for consumption. Ramesh couldn't reasonably inspect sealed rice packets for such defects at the time of purchase.

Thus, the implied condition as to merchantability has been breached. Mr. Ramesh is entitled to reject the goods and claim a refund or damages. The seller's defense does not hold as the goods were not of merchantable quality.

5)a)ii) A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930? (3m)

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

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

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

5)b)i) Explain what is the property of the firm. Also when can a private property can be treated as property of the firm? (4m)

Ans - THE PROPERTY OF THE FIRM (SECTION 14): The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled. The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii)) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
- (iii) Goodwill of the business.

The determination of the question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners. Thus, the mere fact that the property of a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) or the separate property of any partner into a partnership property.

5)b)ii) What are the rights of transferee of a firm? Also explain its rights on dissolution of partnership firm. (3m)

Ans - The rights of such a transferee are as follows:

(I) During the continuance of partnership, such transferee is not entitled:

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

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

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

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

5)c)i) "Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872. State the exceptions to this rule (4m)

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

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

- i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
- ii) Where the silence is, in itself, equivalent to speech.

5)c)ii) State the rights of Indemnity-holder when sued. (2m)

Ans - Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

- (a) all damages which he may be compelled to pay in any suit
- (b) all costs which he may have been compelled to pay in bringing/ defending the suit and
- (c) all sums which he may have paid under the terms of any compromise of suit.

6)a)i) Mr. A draws a bill of exchange on Mr. B. The bill mentions Mr. C as the "Drawee in case of need." Mr. B refuses to accept the bill upon presentment. The holder, Mr. D, presents the bill to Mr. C for acceptance, but Mr. C also refuses.

- (i) Is presentment to Mr. C necessary before treating the bill as dishonoured?**
- (ii) What is the legal position of Mr. C and Mr. B in this case?**

Support your answer with relevant provisions of the Negotiable Instruments Act, 1881. (4m)

Answer to 6)a)i)

As per Section 115 of the Negotiable Instruments Act, 1881: When a bill of exchange contains the name of a person in addition to the drawee, to be resorted to in case of need, such person is called a "Drawee in case of need."

- (i) In the given case, Mr. C is expressly named in the bill as Drawee in case of need. As per law, the bill is not deemed to be dishonoured until it has been duly presented to the drawee in case of need, unless such presentment is excused.

Therefore, yes, presentment to Mr. C is necessary before the bill can be treated as dishonoured.

- (ii) Mr. C, as a Drawee in case of need, is not primarily liable, but he becomes liable only if he accepts the bill. Since he has refused to accept, he does not incur any liability. Mr. B, the original drawee, has also refused acceptance, which is a dishonour by non-acceptance.

Hence, Mr. B remains the primary drawee, and the bill stands dishonoured after refusal by both B and C.

6)a)ii) Anirudh drew a bill of exchange on Bharat, payable to the order of Charan. Charan indorsed it to Devansh, who then indorsed it to Esha, instructing his assistant to deliver it to her after she returned from a trip. Before the assistant could deliver the bill, Devansh died. The assistant, unaware of the death, delivered the bill to Esha the next day, as instructed. On maturity, Bharat dishonoured the bill.

Discuss whether Esha has the legal right to enforce the payment of the bill against Bharat or prior parties. In your answer, explain the legal relevance of delivery in the negotiation of a negotiable instrument under the Negotiable Instruments Act, 1881. (3m)

Answer to 6)a)ii)

As per Section 46 of the Negotiable Instruments Act, 188, A negotiable instrument becomes operative only upon delivery. Delivery must be with the intention of giving effect to the instrument, and without such intention, the negotiation is incomplete. Further, under the Act, negotiation of an instrument payable to order occurs by endorsement followed by delivery.

In the instant case, Devansh endorsed the bill to Esha, but did not personally deliver it, instead gave instructions to his assistant for future delivery. Before actual delivery could take place, Devansh died, which raises doubt whether delivery was completed with full legal intent. However, the assistant acted as per the clear instruction of Devansh before his death, and delivery was executed as intended, though after his demise.

From the given law and facts of the case, Since the intention to deliver was clearly established before death, and delivery was done in accordance with that intent, Esha obtains a valid title to the bill.

Therefore, Esha can enforce payment against Bharat and prior parties.

6)b) Explain differences between Contract of Indemnity and Contract of Guarantee.**(6m)**

Ans –

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

6)c)i) Explain when Stoppage in transit comes to an end as per The Sale of Goods Act, 1930. (4m)

Ans – The right of stoppage in transit is lost when transit comes to an end.

Transit comes to an end in the following cases:

- ◆ When the buyer or other bailee obtains delivery.
- ◆ Buyer obtains delivery before the arrival of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.
- ◆ Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
- ◆ If the carrier wrongfully refuses to deliver the goods to the buyer.

- ◆ Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
- ◆ Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.
- ◆ Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.
[section 51]

6)c)ii) Explain when right of lien is terminated as per the Sale of Goods Act, 1930. (3m)

Ans – Termination of lien (Section 49):

The unpaid seller loses his right of lien under the following circumstances:

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (ii) Where the buyer or his agent lawfully obtains possession of the goods.
- (iii) Where seller has waived the right of lien.
- (iv) By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

Exception: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. (This means even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.)

OR

6)c) “Nemo Dat Quod Non Habet” – “None can give or transfer goods what he does not himself own.” Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930. (7m)

Answer - In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

(1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

- (a) If he was in possession of the goods or documents with the consent of the owner;
- (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

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

(2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

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

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

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

(8) Sale under the provisions of other Acts:

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

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

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