



CA Foundation May 2025

BUSINESS LAW

EXAM ORIENTED FREE

FASTRACK BATCH

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STREAMING **ON YOUTUBE**
EVERYDAY

CA Nimesh Agrawal

Details

Time : 4:30 pm to 6:15 pm daily

Source : ICAI Module

Batch Completion : Upto 15th April



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Chapter: 1 - Indian Regulatory Framework
Question Bank (Updated till Jan2025 Attempt)

06 - Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework? 4(c)6m,MDTP1,5,7,10, 4(c)6m,Sept2024, 4(c)6m,MTP1,June2024

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.

05 - What is Law and what is the process/procedure of making a law?

4(c)6m,MDTP1, ICAI Module, RTP,Sept2024, 4(c)6m,MTP1,Sept2024,
4(c)6m,MTP1,Jan2025

Ans - What is Law?

Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

The Process of Making a Law

- i) When a law is proposed in parliament, it is called a Bill.
- ii) After discussion and debate, the law is passed in Lok Sabha.
- iii) Thereafter, it has to be passed in Rajya Sabha.
- iv) It then has to obtain the assent of the President of India.
- v) Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- vi) The law will become applicable from the date mentioned in the notification as the effective date.
- vii) Once it is notified and effective, it is called an Act of Parliament.

04 - What is the structure of the Indian Judicial System, and what is the hierarchy of courts in India?

4)c)6m,MDTP6, 4)c)6m,MTP2Sept2024, 4)c)6m,Jan2025

OR

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

RTP, June 2024

Ans - When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

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.

In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District 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.

i) Supreme Court

The Supreme Court is the apex body of the judiciary. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India.

ii) High Court

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power.

iii) District Court

Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.

Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

iv) Metropolitan courts

Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

03 - Describe in brief about the following Regulatory bodies of the Government of India: -

i) Securities and Exchange Board of India

ii) Reserve Bank of India

iii) Insolvency and Bankruptcy Board of India

4)c)6m,MDTP8,9, 4)c)6m,June2024, 4)c)6m,MTP2,Jan2025

Ans -

i) The Securities and Exchange Board of India (SEBI):

- It is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

ii) Reserve Bank of India (RBI):

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

iii) Insolvency and Bankruptcy Board of India (IBBI)-

- It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.

- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

02 - What is the significance of the Supreme Court and High Court in the Indian judiciary?

4)c)6m,MDTP1, ICAI Module, 4)c)6m,MTP2,June2024, 4)c)6m,RTP,Jan2025

Ans - Supreme Court: The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

High Court: The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

01 - Write a short note on the following:

- i) Ministry of Corporate Affairs (MCA)
- ii) Ministry of Home Affairs

4)c)6m,MDTP1, 4)c)6m,MTP3,June2024

Ans -

- i) **Ministry of Corporate Affairs (MCA):** MCA is an Indian Government Ministry which primarily concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016. It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry is mostly run by civil servants of the ICLS cadre. These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.

The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

- ii) **Ministry of Home Affairs:** It is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

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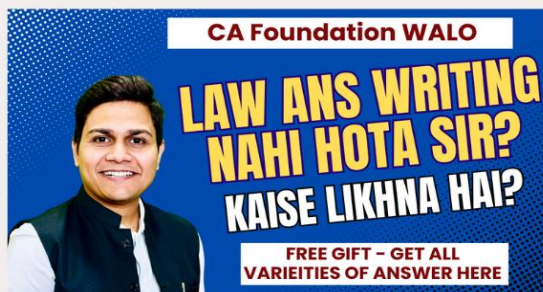
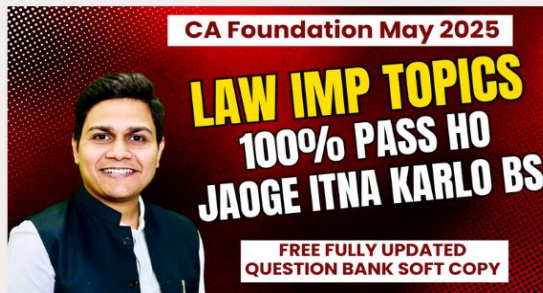
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Chapter: 2 - Indian Contract Act, 1872

Unit: 1 - Nature of Contracts

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

22 - Mr. A offered to sell 25 chairs to Mr. B @ ₹ 1,500 per chair on 12.02.2024. A promised B that he would keep the offer open till 15.02.2024. However, on 13.02.2024, he sold those chairs to Mr. C @ 1,700 per chair without the knowledge of B. Mr. B communicated the acceptance of the above offer on 14.02.2024. ICA Advise, with reference to provisions of The Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A?

1)a)ii)2m,MDTP10, 1)a)ii)2m,Sept2024

Ans - In terms of Section 5 of the Indian Contract Act, 1872, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.

Accordingly, an offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

In the instant case, B cannot claim damages from A because the offer made by A is a mere offer and it can be withdrawn whenever A desires.

21 - Mr. Ayush is the principal in Modern Public School. He needs 2000 packets of Biscuits to be distributed to students in his school on the occasion of Republic Day celebration. For this purpose, he contracted with Yograj Biscuit Company. Mr. Ayush visited the workshop of Yograj Biscuit Company and was very much satisfied with the quality of biscuits. He also found that a large number of varieties of biscuits are manufactured in the workshop. He ordered 2000 packs of biscuits and gave the token money but did not specify the category of biscuits, he needed. Yograj Biscuit Company did not supply the biscuits on the due date. Mr. Ayush filed the suit against Yograj Biscuit Company for compensation. State with reasons, whether Yograj Biscuit Company is liable under Indian Contract Act, 1872?

1)a)4m,MTP1,Dec2023

Ans - According to the Indian Contract Act 1872, the meaning of agreement must be certain and not vague or indefinite. If the meaning of agreement is not certain, the agreement is not enforceable by law.

In the instant case, Mr. Ayush is being principal in Modern Public School ordered 2000 packs of biscuits to Yograj Biscuit Company for the purpose of distribution on Republic Day among students. He also gave the token money but did not specify the category of biscuits. Yograj Biscuit Company did not supply the biscuits on the due date and Mr. Ayush filed the suit for compensation.

On the basis of above provisions and facts, it can be said that the agreement was not enforceable for want of certainty of meaning as Mr. Ayush did not specify the category of biscuits. Hence, Yograj Biscuit Company is not liable to pay any compensation to Mr. Ayush.

20 - Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited ` 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha?

1)a)4m, June 2023

Ans - As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

19 - Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872.

6)a)5m, June 2023

Ans -

S.No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Enforceability	A void contract cannot be	It is enforceable only at the option

		enforced at all.	of aggrieved party and not at the option of the other party.
3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
4	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

18 - Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract.

1)a)4m,MTP2,June2022

Ans - Section 10 of Indian Contract Act, 1872 laid down the essential elements of a valid contract. One of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarifies "two or more persons are said to consent when they agree upon the same thing in the same sense"

In the present case, both the parties have given a free consent but they are not consenting for the same thing in the same sense. Mr. Joy wants to sell flat no. 101 and Mr. Roy has agreed the contract thinking that it's flat no. 102.

Hence, the agreement would be invalidated at the inception (beginning) stage itself because both the parties did not agree about a thing (sale of flat) in the same sense. Hence, both the parties did not have mutual consent for the contract; therefore it is not a valid contract.

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

RTP, June 2022

Ans - An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. But there is an exception to above provisions. When advertisement in newspaper is made for reward, it is the general offer to public.

On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay ` 10,000 to Mr. Vikram.

16 - "All contracts are agreements, but all agreements are not contracts". Comment.

2)a)4m, MTP2, June 2022, 2)a)i)4m, MTP2, Dec 2021, ICAI Module

Ans - An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract, an agreement must give rise to a legal obligation i.e. duly enforceable by law. If an agreement is incapable of creating a duly enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements.

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

15 - Ashok goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of ` 40,000 after a discount of ` 3000. Ashok reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ` 43,000." Ashok got angry and insists for ` 40,000. State with reasons whether under Indian Contract Act, 1872, Ashok can enforce the cashier to sell at discounted price i.e. ` 40,000.

1)a)i)4m,MDTP6, 1)a)i)4m,MTP2,Sept2024, 1)a)4m,MTP1,June2023,
Sim,1)a)4m,MTP1,Dec2021

Ans - An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Ashok reaches to super market and selects a Air Conditioner with a discounted price tag of ` 40,000 but cashier denied to sell at discounted price by saying that discount is closed from today and request to make full payment. But Ashok insists to purchase at discounted price.

On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashok who is making the offer not the super market. Cashier has right to reject the Ashok's offer. Therefore, Ashok cannot enforce cashier to sell at discounted price.

14 - Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872? RTP,June2024, RTP,Dec2021

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

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

On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment.

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

RTP, Dec2021

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

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

12 - Define the term "Acceptance". Discuss the legal provisions relating to communication of acceptance.

RTP, Dec2020

Ans - According to Section 2(b), the term 'acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. "

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within the reasonable time and communicated to offeror. Acceptance can also be made by way of conduct.

The legal provisions relating to communication of acceptance are contained in Section 4.

The communication of an acceptance is complete:

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

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

- 1) by any act or

- 2) by omission intending thereby communicate to the other or which has the effect of communicating it to the other.

The first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes of communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by everyone, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

11 - Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872.

2)a)ii)3m,MTP2,Dec2021, 1)a)4m,MTP2,June2021, 1)a)4m,MTP1,June2019, ICAI Module

Ans - Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

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

10 - Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer? RTP, Dec2019

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.

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

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

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

09 - A sends an offer to B to sell his second-car for ` 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week? RTP, Dec2019, ICAI Module

Ans - Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance.

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

08 - Comment on the following statements:

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

RTP, June 2019

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

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

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

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

07 - A mobile phone was displayed in a shop with a price tag of ` 10,000 attached to the mobile display box. As the price displayed was very less as compared to M.R.P. of the mobile phone, Y, a customer rushed to the cash counter and asked the shopkeeper to receive the payment and pack up the mobile phone. The shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone. Y seeks your advice whether he can sue to shopkeeper for the above cause under the Indian Contract Act, 1872.

3)b)i)3m, Dec2023, 3)b)ii)3m, Dec2018

Ans - An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Y reaches to shop and selects a Mobile Phone with a price tag of ` 10,000 but the shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone.

On the basis of above provisions and facts, the price tag with the Mobile Phone was not offer. It is merely an invitation to offer. Hence, it is Y who is making the offer and not the shopkeeper. Shopkeeper has the right to reject Y's offer. Therefore, Y cannot sue the shopkeeper for the above cause.

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

3)b)i)3m,Dec2018

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

In the given question, Mr. Ramesh promised to pay ` 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

05 - Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.

1)a)4m,MTP2,Dec2018

Ans - Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour v. Balfour. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs. 1 lakh from father for the reasons explained above.

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

6)a)5m, June2018, 2)a)7m, MTP1, Dec2018

Ans - Modes of revocation of Offer

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

03 - Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following:

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

RTP, Dec2018

Ans - The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

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

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

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

RTP, Sept2024, 2)i)4m, MTP1, Dec2022, RTP, June2020, RTP, Dec2018, ICAI Module

Ans - i) It is a void contract.

Void Contract: Section 2 (j) of the Indian Contract Act, 1872 states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus, a void contract is one which cannot be enforced by a court of law.

ii) It is an implied contract and Rohan must pay for the services of the coolie.

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

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

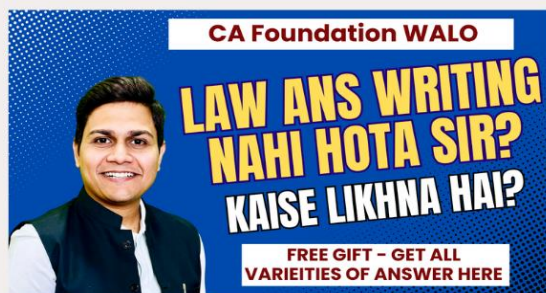
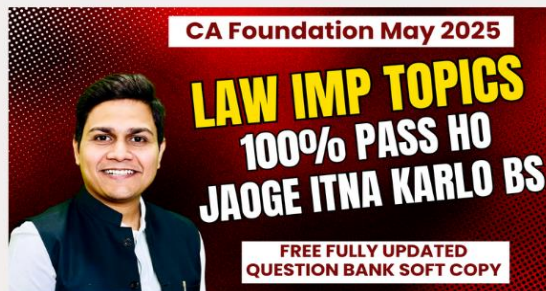
Quasi-Contract: A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract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

Q1 - Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages? ICAI Module

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

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

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Chapter: 2 - Indian Contract Act, 1872

Unit: 2 - Consideration

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

10 - Mr. A was running an orphanage. His friend Mr. S, a Philanthropist agreed to who suffering from was donate 2 lakh for treatment of a child, cancer. On emergency Mr. A incurred 1.5 lakh on treatment of child. Now Mr. S refused to pay. Whether Mr. A can claim 1.5 lakh from Mr. S with reference to provisions of The Indian Contract Act, 1872?

1)a)i)3m,MDTP8,10, 1)a)i)3m,MTP2,Jan2025, 1)a)iii)2m,Sept2024

Ans - The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).

However, in the following case, the agreement though made without consideration, will be valid and enforceable.

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

09 - What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872 ?

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts

6)b)6m,MDTP2,7,10, 5)c)ii)3m,MTP1,Jan2025, RTP,Jan2025, 3)c)ii)3m,Sept2024,
6)a)5m,MTP1,Dec2023, 2)a)7m,Dec2022

Ans - i) **Agreements made out of love and affection are valid agreements:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

- a) It must be made out of natural love and affection between the parties.
- b) Parties must stand in near relationship to each other.
- c) It must be in writing.
- d) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

ii) **Promise to pay a time barred debt cannot be enforced:** According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration.

Hence, this statement is not correct.

Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

08 - Mr. Om Kashyap was a big businessman of Pune City having two sons 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 of them 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?

4)a)i)MDTP5, 4)a)i)4m,MTP1,Sept2024, RTP,June2024, RTP,June2023,
1)a)4m,MTP1,Dec2022, RTP,Dec2021

Ans - 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 instant case, the transfer of house made by Mr. Om Kashyap 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.

07 -Mr. Y has given loan to Mr. G of ` 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable as per the Indian Contract Act, 1872?

1)a)ii)2m,MDTP3, 1)a)ii)2m,MTP2,June2022, 3)c)ii)2m,Dec2020

Ans - Promise to pay time-barred debts - Section 25 (3): Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

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

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

06 -Mr. Sooraj sold 10 acres of his agricultural land to Mr. Murli on 25th September 2019 for Rs. 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chander, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2019, Mr. Sooraj died leaving behind his son and wife. On 15th October, 2019 Mr. Murli started construction of an auditorium on the whole 10 acres of land and denied any land to Mr. Chander.

Now Mr. Chander wants to file a case against Mr. Murli and get a suitable remedy. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr.

Chander's plan of action? 1)a)4m,MTP1,June2020, 1)a)4m,June2019, Sim,ICAI Module

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

In the given problem, Mr. Sooraj has entered into a contract with Mr. Murli, but Mr. Chander has not given any consideration to Mr. Murli but the consideration did flow from Mr. Sooraj to Mr. Murli on the behalf of Mr. Chander and such consideration from third party is sufficient to enforce the promise of Mr. Murli to allow Mr. Chander to use 1 acre of land. Further the deed of sale and the promise made by Mr. Murli to Mr. Chander to allow the use of 1 acre of land were

executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

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

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chander is entitled to file a petition against Mr. Murli for execution of contract.

05 - As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872.

3)c)6m,MDTP2, 2)a)7m,MTP2,Dec2023, 2)a)7m,June2023, RTP,June2020, RTP,June2018

Ans - Under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; but the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

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

- 1) **In the case of trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- 2) **In the case of a family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement, may enforce the agreement.
- 3) **In the case of certain marriage contracts/arrangements**, a provision may be made for the benefit of a person, who may file a suit though he is not a party to the agreement.
- 4) **In the case of assignment of a contract**, when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.
- 5) **Acknowledgement or estoppel** - Where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

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

04 - "The general rule is that an agreement made without consideration is void." State the exceptions of this general rule as per the Indian Contract Act, 1872.

2)a)7m,June2022, RTP,Dec2019, RTP,June2019, 2)a)5m,June2018,
6)a)5m,MTP2,June2019, 6)a)5m,MTP1,June2018, 6)a)5m,MTP2,Dec2018

Ans - An agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872): In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

Exceptions:

1. Natural Love and Affection: Conditions to be fulfilled under section 25(1)

- i) It must be made out of natural love and affection between the parties.
- ii) Parties must stand in near relationship to each other.
- iii) It must be in writing.
- iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

- i) The services should have been rendered voluntarily.
- ii) The services must have been rendered for the promisor.

- iii) The promisor must be in existence at the time when services were rendered.
 - iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].
4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
6. **Bailment:** No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment.
7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (Kadarnath v. Gorie Mohammad)

03 - "To form a valid contract, consideration must be adequate". Comment.

2)b)3m,MTP1,Dec2022, RTP,June2021, RTP,Dec2020, 6)a)5m,MTP1,Dec2019, 6)a)5m,MTP1,Dec2018, ICAI Module

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

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

02 - Define consideration. State the characteristics/rules of a valid consideration under the Indian Contract Act, 1872.

5)c)6m,MDTP6, 3)c)6m,MDTP4, 5)c)6m,MTP2,Sept2024, 3)c)6m,MTP3,June2024,
6)a)5m,MTP1,June2023, 6)a)5m,MTP2,June2021, 2)a)7m,Dec2019,
6)a)5m,MTP1,June2019, RTP,Dec2018

Ans - Consideration [Section 2(d) of the Indian Contract Act, 1872]

"When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

The essential characteristics of a valid consideration are as follows:

- (1) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.
- (2) **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.
- (3) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
- (4) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
- (5) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- (6) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract.

Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration.

- (7) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
- (8) **Consideration must not be unlawful, immoral, or opposed to public policy:** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration

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

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid? RTP, Dec2018

Ans - In India, consideration may proceed from the promise or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to the enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

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CA Nikesh Agrawal

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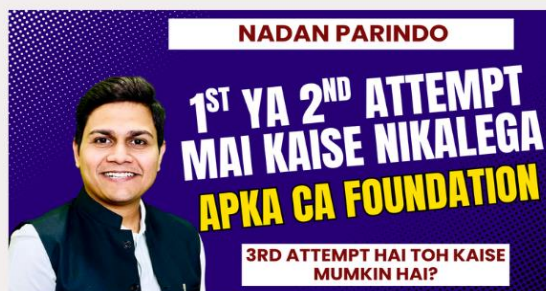
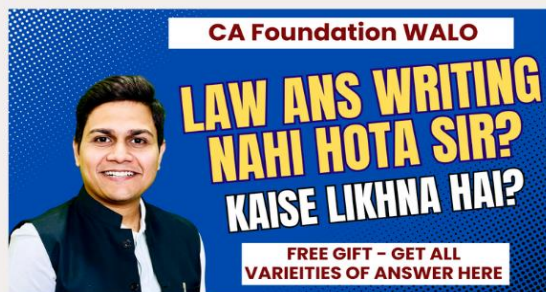
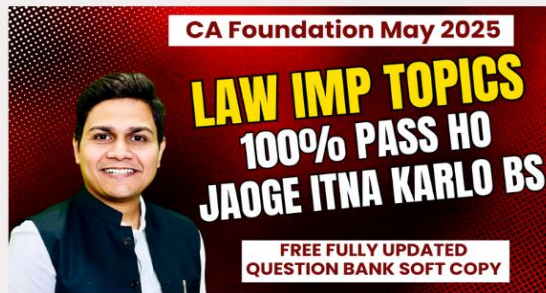
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Chapter: 2 - Indian Contract Act, 1872

Unit: 3 - Other Essential Elements of a Valid Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

46 - Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M, their neighbour, out of pity, started supplying food and other necessities to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother with some financial assistance for her emergency medical treatment. After supplying necessities to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parents' jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y with a legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

- (a) Will Mr. M succeed in filing the suit to recover money?
- (b) What is the maximum amount of money that can be recovered by Mr. M?
- (c) Shall the provisions of the above Act also apply to the medical treatment given to the grandmother?

Ans - (a) Claim for necessities supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessities to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(b) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(c) Necessaries will include emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

45 - What are the agreements which are held to be opposed to public policy under the Indian Contract Act, 1872. Explain any 6 such agreements. 3)c)6m, Jan2025

Ans - Some of the agreements which are held to be opposed to public policy are-

(1) Trading with enemy: Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

(2) Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

(3) Maintenance and Champerty: Maintenance is an agreement in which a person promises to maintain suit in which he has no interest.

Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.

(a) It is unreasonable so as to be unjust to other party or

(b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

(4) Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

(1) 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 void.

(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

(5) Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

(6) Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

(7) Interference with the course of justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy.

(8) Interest against obligation: The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

(1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

(2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ` 200,000 privately; the agreement is void.

(9) Consideration Unlawful in Part: By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

44 - Examine the validity of the following agreements under the provisions of the Indian Contract Act, 1872 and justify your answer:

(i) Mrs. Priya pays a sum of ` 10,000 to a marriage bureau to provide information about the prospective grooms for her daughter's marriage.

(ii) Bharat agrees with John to sell his white bull. Unknown to both the parties, the bull was dead at the time of agreement.

(iii) Rishabh sells the goodwill of his shop to Omkar for ` 10,00,000 and promises not to carry on such similar business within the local limits so long as Omkar carries on like business.

(iv) A property worth ` 2,00,000 was agreed to be sold for just ` 25,000 by a person of unsound mind. 1)a)7m, Jan2025

Ans - (i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.

In the instant case, the agreement to pay ` 10,000 in exchange for a service (providing information about prospective grooms) is lawful.

Hence, the agreement is valid.

(ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.

In the instant case, the bull's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract.

Hence, the agreement is void.

(iii) Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, the restriction is limited to the local area and does not extend indefinitely.

Hence, the agreement is valid.

(iv) According to section 12, a contract by a person who is not of sound mind is void. In the instant case, a property worth ` 2,00,000 was agreed to be sold for just ` 25,000 by a person of unsound mind.

Hence, the agreement is void.

43 - Whether the threat to commit suicide is coercion?

6)b)ii)2m, Sept2024

Ans - Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 of the Indian Contract Act, 1872 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

42 - Explain with reference to the Indian Contract Act, 1872:

(i) When a contract is said to be induced by "undue influence".

5)c)i)2m, Jan2025

OR

Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

4)a)i)3m,MDTP4, RTP,June2024, 4)a)i)3m,MTP3,June2024, 3)b)i)2m,June2023

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

OR

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. Ayush and Mr. Bobby is voidable at the option of Mr. Bobby as it was induced by undue influence by Mr. Ayush and therefore Mr. Bobby can sue Mr. Ayush.

41 - Mr. Vikas a businessman has been fighting a long-drawn litigation with Mr. Neeraj an industrialist. To support his legal campaign, he enlists the services of Mr. Manoj a Judicial officer stating that the amount of ` 10 lakhs would be paid to him if he does not take up the brief of Mr. Neeraj.

Mr. Manoj agrees but, at the end of the litigation Mr. Vikas refuses to pay to Mr. Manoj. Decide whether Mr. Manoj can recover the amount promised by Mr. Vikas under the provisions of the Indian Contract Act, 1872?

1)a)ii)3m,MDTP4, 1)a)ii)3m,MTP3,June2024

OR

Mr. Seth (an industrialist) has been fighting a long-drawn litigation with Mr. Raman (another industrialist). To support his legal campaign, Mr. Seth enlists the services of Mr. X, a legal expert stating that an amount of ` 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.

RTP,Dec2023, 1)a)4m,Dec2020

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

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

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

OR

According to Section 27 of Indian Contract Act, 1872 an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

In the instant case, Mr. Seth is in litigation with Mr. Raman since long. Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ` 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay.

As section 27 makes the contracts in restraint of trade, void, the contract between Mr. Seth and Mr. X is also void. Hence, Mr. X cannot recover the amount promised by Mr. Seth

40 - Kashish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of Indian Contract Act, 1872?

1)a)7m,MDTP1, 1)a)7m,MTP1,June2024

Ans - According to Section 27 of Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, Kashish sold his running business of artificial jewellery to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area and for a period of next one year but just after two months, Kashish opened a show room of real diamond jewellery. Naman sued Kashish for closing the business of real diamond business as it was against the agreement.

As exceptions to section 27 is applicable to similar business only, agreement between Naman and Kashish will not be applicable on business of real diamond jewellery. Hence, Kashish can continue his business of real diamond jewellery.

39 - Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872.

6)b)6m,MDTP6, 6)b)6m,MTP2,Sept2024, 2)a)7m,Dec2023

Ans - Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

- 1) 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 void.
- 2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice, therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.

Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

38 - Chhotu of 17 years has purchased a mobile of ` 25,000 for his online classes from Mobile Sales Centre on credit. On due date, he did not make the payment of mobile. Mobile Sales Centre sued Chhotu and his parents for the price of mobile. Chhotu has ` 15,000 as his cash balance but his father has enough money to pay the price of mobile. Who will be liable to pay the price of mobile under the provisions of Indian Contract Act, 1872?

3)b)6m,MTP1,Dec2023

Ans - Section 11 of the Indian Contract Act, 1872 provides that a minor is not capable to enter into a contract. A contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessities out of his assets. Minor is not personally liable even for necessities.

In the instant case, parents of Chhotu are not liable for price of mobile. Chhotu's assets are liable to make the payment of price. Hence, Mobile Sales Centre can recover only ` 15,000 from Chhotu i.e. equal to his assets.

37 - Ayush, who is a minor, purchased 10 fancy coats for the wedding ceremony of his sister on credit from M/s Surjewala & sons. The cost of all coats was ` 80,000. Not even a single coat was a necessity. Ayush has assets of worth of ` 1,00,000. M/s Surjewala & sons file a suit against Ayush for recovery of ` 80,000 out of his assets. Following the provisions of Indian Contract Act, 1872, whether Ayush is liable to pay ` 80,000 to M/s Surjewala & sons?

3)b)6m,MTP2,Dec2023

Ans - According to Section 11 of Indian Contract Act, 1872, a contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessities out of his assets. Minor is not personally liable even for necessities.

In the instant case, M/s Surjewala & sons file a suit against Ayush for recovery of ` 80,000 out of his assets who purchased 10 fancy coats for the wedding ceremony of his sister on credit from M/s Surjewala & sons.

On the basis of the facts of the problem, coats were not necessary items for Ayush. Hence, his assets cannot be attached for payment of price of coats. Therefore, M/s Surjewala & sons cannot claim ` 80,000 from Ayush.

36 - Mr. Nikhil has decided to get interior work for his new office. For this purpose, he entered into a contract with M/s Sherry Fine Interiors. It was agreed that M/s Sherry Fine Interiors will complete the interior work latest by 31st January, 2023. On 31st January, 2023, Mr. Nikhil observed that only 20% to 30% work has been completed. He decided to cancel the contract with M/s Sherry Fine Interiors. On cancellation of the contract, M/s Sherry Fine Interiors filed a suit against Mr. Nikhil for recovery of the cost which it has incurred on the interior work. Mr. Nikhil argued that M/s Sherry Fine Interiors did not complete the work within the time as per contract and further the work done till 31st January, 2023 by M/s Sherry Fine Interiors was of no use for him as he has to appoint a new interior designer. Explain, whether Mr. Nikhil is liable to pay the cost of work done by M/s Sherry Fine Interiors under the provisions of Indian Contract Act, 1872?

1)a)4m,MTP2,Dec2023

Ans - Section 2(i) of Indian Contract Act, 1872 provides that an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract. Further, when a party to a contract promise to perform a work within a specified time, could not perform within that time, the contract is voidable at the option of the promisee. If promisee has received any benefit, he must return to promisor.

In the given problem, the contract is voidable at the option of Mr. Nikhil as work is not completed within the time agreed in the contract. Further, Mr. Nikhil is not liable to pay the cost incurred by M/s Sherry Fine Interiors as that cost did not provide any benefit to him and he has to appoint a new interior designer.

35 - State with reason(s) whether the following agreements are valid or void as per the Indian Contract Act, 1872:

- i) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

iii) X, a physician and surgeon, employs Y as an assistant on a salary of ` 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

RTP, Dec2023

OR

i) A clause in a contract provided that no action should be brought upon in case of breach.

RTP, Jan2025, 1)a)4m, June2021

Ans - i) The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court (Section 28 of the Indian Contract Act, 1872). A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement, suit may be filed in one of the courts having jurisdiction.

ii) The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent, and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

iii) The said agreement is valid.

Reason: An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void (Section 27). But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

OR

i) The given agreement is void.

Reason: As per Section 28 of the Indian Contract Act, 1872, this clause is in restraint of legal proceedings because it restricts both the parties from enforcing their legal rights.

Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

34 - Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ` 70,000

towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of ` 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ` 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

3)b)6m,MTP1,June2023

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

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

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ` 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

33 - State which of the following agreements are valid contract under the Indian Contract Act, 1872?

- a) A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.
- b) A threatened to shoot B if he (B) does not lend him ` 2,00,000 and B agreed to it.
- c) A agrees to sell his house to B against 100 kgs of cocaine (drugs).
- d) A ask B if he wants to buy his bike for ` 50,000. B agrees to buy bike.
- e) Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident.

RTP,June2023

Ans - a) A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.

b) A threatened to shoot B if he (B) does not lend him ` 2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.

c) A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.

d) A ask B if he wants to buy his bike for ` 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.

e) Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

32 - Differentiate between Novation and Alteration as per the Indian Contract Act, 1872.

5)c)3m,MDTP2, 6)a)5m,Dec2022

Ans - Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. Still there is a difference between these two.

1. **Meaning:** Novation means substitution of an existing contract with a new one. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties.
2. **Change in terms and conditions and parties:** Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
3. **Substitution of new contract:** In case of novation, there is altogether a substitution of new contract in place of the old contract. But in case of alteration, it is not essential to substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.

31 - X agrees to pay Y ` 1,00,000/-, if Y kills Z. To pay Y, X borrows ` 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

- i) Between X and Y.

ii) Between X and W

4)a)ii)MDTP2,7, 4)a)ii)MTP1,Jan2025, 1)a)4m,Dec2022

Ans - Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

- i) X agrees to give ` 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.
- ii) X borrows ` 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

30 - What will be rights with the promisor in following cases? Explain with reasons:

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

RTP,Dec2022

Ans - a) The contract is void because of its initial impossibility of performance.

b) Time is essence of this contract. As by the time apples reached B, they were already rotten. The contract is discharged due to destruction of subject matter of contract.

c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.

d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

29 - Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872?

3)b)6m,MTP1,June2022

Ans - Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:

- i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- ii) the active concealment of a fact by one having knowledge or belief of the fact;
- iii) a promise made without any intention of performing it;
- iv) any other act fitted to deceive;
- v) any such act or omission as the law specially declares to be fraudulent.

It was also explained that mere silence is not fraud. Silence amounts to fraud where (a) there is a duty to speak or (b) where silence is equivalent to speech.

On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

28 - Paridhee, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Mittal, owner of MP Laptops, for purchase of Laptop on credit amounting ₹ 60,000/- on 1st August 2022. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2023. 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 Paridhee 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 a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

- i) By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?
- ii) By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?
- iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority? **RTP, Jan2025, RTP, Dec2023, 3)b)6m, June2022**

Ans - A contract made with or by a minor is void ab-initio: Pursuant to Section 11 of the Indian Contract Act, 1872, 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. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, 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. Mittal will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Paridhee.

- 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. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, after she attains majority.

27 - Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid ` 20,000 for that table. Later on, it was found that one leg of table is broken, and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872. **RTP, Dec2022, 2)b)3m, MTP2, June2022**

Ans - As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is

termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed.

In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19).

In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X.

On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

26 - Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was ` 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of ` 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872? RTP, June 2022

Ans - 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.

25 - 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. RTP, June 2022

Ans - 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.

24 - Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

i) X aged 16 years borrowed a loan of ` 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.

ii) Unit - 4 3)b)6m,MTP2,Dec2022, 3)b)6m,Dec2021

Ans - i) According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X

can ratify it. The loan was for personal purposes and not for necessities supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

23 - Explain any five circumstances under which contracts need not be performed with the consent of both the parties.

2)a)7m,MTP1,Dec2023, 2)a)7m,MTP2,Dec2022, 2)a)7m,Dec2021

Ans - Under following circumstances, the contracts need not be performed with the consent of both the parties:

- i) **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
- ii) **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
- iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
- iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)
- v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
- vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

22 - Mr. Mukund wants to sell his car. For this purpose, he appoints Mr. Parth, a minor as his agent. Mr. Mukund instructs Mr. Parth that car should not be sold at price less than ` 2,00,000. Mr. Parth ignores the instruction of Mr. Mukund and sells the car to Mr. Naman

for ₹ 1,50,000. Explain the legal position of contract under Indian Contract Act, 1872 whether:

A) Mr. Mukund can recover the loss of ₹ 50,000 from Mr. Parth?

B) Mr. Mukund can recover his car from Mr. Naman?

RTP, June 2023, 1)a)4m, MTP2, Dec 2021

Ans - According to the provisions of Section 11 of Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

In the instant case, Mr. Mukund appoints Mr. Parth, a minor as his agent to sale his car. Mr. Mukund clearly instructed to Mr. Parth that the minimum sale price of the car should be ₹ 2,00,000 yet Mr. Parth sold the car to Mr. Naman for ₹ 1,50,000.

- a) Considering the facts, although the contract between Mr. Mukund and Mr. Parth is valid, Mr. Parth will not be liable to his principal for his acts. Hence, Mr. Mukund cannot recover the loss of ₹ 50,000.
- b) Further, Mr. Naman purchased the car from agent of Mr. Mukund, he got good title. Hence, Mr. Mukund cannot recover his car from Mr. Naman.

21 - 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?

RTP, June 2023, 3)b)6m, MTP2, June 2022, 3)b)6m, MTP1, Dec 2021

Ans - 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.

20 - Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ` 40,000. He was very happy to get ` 40,000 and quickly went to the market and purchased a laptop worth ` 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

RTP, Dec2021

Ans - As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.

However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.

Hence, in the present case, Rahul is not liable to repay ` 40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

19 - X, Y and Z jointly borrowed ` 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

- i) Whether L can compel only Y to pay the entire loan of ` 90,000?**
- ii) Whether L can compel only the legal representatives of Y to pay the loan of ` 90,000, if X, Y and Z died?**
- iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?**

3)b)6m, June2021

Ans - i) Yes, L can compel only Y to pay ` 90,000/- since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

ii) As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise.

In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of ` 90,000.

iii) According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors. In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of ` 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.

18 - Krish, Kamyra and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

1)a)4m, MTP1, June2021

Ans - As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case, Krish, Kamy and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamy become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamy's estate, and Rs. 2,80,000 from Ketan.

17 - Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to Mr. Shyam, to apply for voluntary retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ` 10 Lakhs as consideration to Mr. Shyam to induce him to retire.

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

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

RTP, Sept2024, RTP, June2021

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

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

In the given case, Mr. Shyam, who was going to be retired after two years was proposed by Mr. Dev, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that, Mr. Dev offered Mr. Shyam a sum of ` 10 lakh as consideration. Mr. Shyam

refused initially but later accepted the said agreement to receive money to retire from his office.

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

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

- i) X promise to sell his scooter to Y for ` 1 Lac. However, the consent of X has been procured by Y at a gun point.
- ii) A bought goods from B in 2015. But no payment was made till 2019.
- iii) G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ` 5,000 per month. **RTP, June2021**

Ans - i) In the instant case, X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.

ii) B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.

iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ` 5,000 per month, the contract is executory because it is yet to be carried out.

15 - Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.

3)c)6m,MDTP3, 3)c)6m,MTP2,June2024, 2)a)7m,Dec2020

Ans - Definition of Fraud : Refer Ans 8

Definition of misrepresentation: Refer Ans 11

Distinction between fraud and misrepresentation:

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

14 - Explain the term Wagering agreement in the light of the Indian Contract Act, 1872. Also, explain some transactions resembling with wagering transaction but which are not void. 3)c)6m,MDTP7,9, 3)c)6m,MTP1,Jan2025, 6)b)6m,June2024, RTP,June2020

Ans - Wagering agreement (Section 30 of the Indian Contract Act, 1872): An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

Transactions resembling with wagering transaction but are not void

- i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid.

- iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

13 - Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. Explain the circumstances in which the person is deemed to be in a position to dominate the will of the other person under the Indian Contract Act, 1872.

5)c)ii)4m, Jan2025, 6)a)5m, June2019, RTP, June2020

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

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

12 - P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

- (a) If P says nothing about the unsoundness of the horse to Q.
- (b) If P says nothing about it to Q who is P's daughter who has just come of age.

(c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing.

3)b)3m,MTP1,June2021, 1)a)3m,MDTP5, 1)a)ii)3m,MTP1,Sept2024,
3)b)3m,MTP2,June2023, 3)b)3m,MTP1,June2020, RTP,June2019

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

(i) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.

(ii) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.

(iii) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

11 - Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract?

RTP,June2020, RTP,June2019, ICAI Module

Ans - Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:

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

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

Accordingly, in the given case Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

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

6)a)5m,MTP1,Dec2021, 6)a)5m,Dec2019, RTP,June2018, 6)a)5m,MTP2,Dec2018

Ans - Coercion (Section 15)

"Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

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

- i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- iii) A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 72)

09 - Mr. SHYAM owned a motor car. He approached Mr. HARISH and offered to sell his motor car for ` 3,00,000. Mr. SHYAM told Mr. HARISH that the motor car is running at the rate of 20 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. HARISH agreed with the proposal of Mr. SHYAM and took delivery of the car by paying ` 3,00,000/- to Mr. SHYAM. After 10 days, Mr. HARISH 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. HARISH can rescind the contract on the above ground.

RTP, June 2021, RTP, Dec 2020, 3)b)6m, MTP1, Dec 2018, Sim, ICAI Module

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

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

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

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

6)a)5m, June 2018

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

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

07 - "Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872.

6)a)5m,Dec2023, 2)a)7m,June2019 RTP,Dec2018, 6)a)5m,MTP1,June2018

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.

06 - Vikas , aged 16 years, was studying in an engineering college. On 1st March, 2019 he took a loan of ` 2 lakhs from Rahul for the payment of his college fee and agreed to pay by 30th May, 2020. Vikas possesses assets worth ` 15 lakhs. On due date, Vikas fails to pay back the loan to Rahul. Rahul now wants to recover the loan from Vikas out of his assets. Decide whether Rahul would succeed referring to the provisions of the Indian Contract Act, 1872.

3)b)6m,MTP1,Dec2020, RTP,June2020 RTP,June2018, Sim,ICAI Module

Ans - According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Vikas who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision, Rahul will be entitled to recover the amount of loan given to Vikas for payment of the college fees from the property of the minor.

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

i) Riya promises Samarth to lend Rs. 500,000 in lieu of consideration that Samarth gets Riya's marriage dissolved and he himself marries her.

(ii) Aryan agrees with Mathew to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.

(iii) Ravi sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.

(iv) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.

(v) Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

1)a)4m,MTP1,Dec2019, RTP,Dec2018, RTP,June2018

Ans - Validity of agreements

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

(ii) **Void Agreement:** As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject matter.

(iii) **Void Agreement:** As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

(iv) **Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(v) **Void Contract:** As per section 2(j) of the Contract Act, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

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

RTP, Dec2022, RTP, June2018, ICAI Module

Ans - Minor can be a beneficiary or can take benefit out of a contract. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

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

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

RTP, Dec2022, RTP, Dec2019, RTP, June2018, ICAI Module

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

02 - 'X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms.

Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

RTP, June2018

Ans - Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

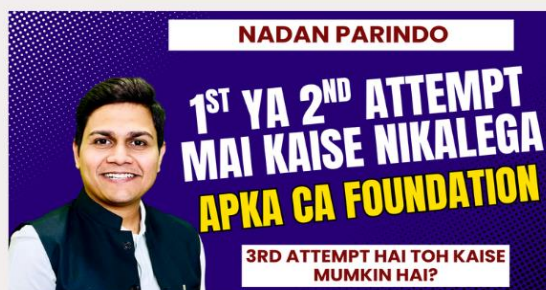
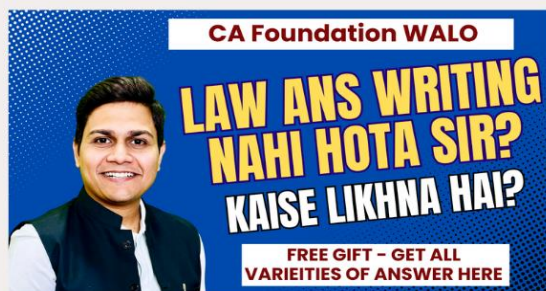
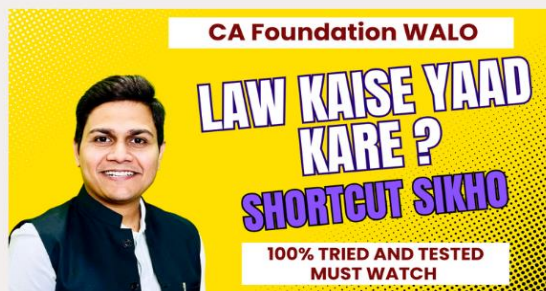
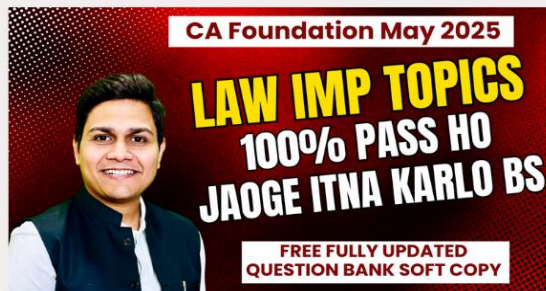
In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

Q1 - "An agreement, the meaning of which is not certain, is void". Discuss. ICAI Module

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

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Chapter: 2 - Indian Contract Act, 1872

Unit: 4 - Performance of Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

23 - Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872?

4)a)i)4m,MDTP1

Ans - "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

22 - A, B and C jointly promised to pay D a sum of ` 6,000. Examine, considering the provisions of the Indian Contract Act, 1872 -

(i) Can D compel any of three parties A, B and C to pay him ` 6,000?

(ii) C is compelled to pay the whole of the amount to D. Can he recover anything from A and B, when - (1) Both A and B were solvents. (2) A is not in a position to pay anything.

4)a)7m,Jan2025

Ans - Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfil the promise.

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

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

In the instant case,

- (i) D can compel any of three parties A, B and C to pay him ` 6,000.
- (ii) (1) C can recover the contribution from A and B because A, B and C are joint promisors.
- (2) A is unable to pay anything, C is compelled to pay the whole. C is entitled to receive ` 3,000 from B.

21 - Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woollen clothes for men, women and kids like sweaters, monkey caps, mufflers, woollen coats, hand gloves etc. before the commencement of the winter season. The agreement expressly provides that the woollen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing the situation and answer the following questions in light of the provisions of The Indian Contract Act, 1872:

(A) Whether company can reject the total supply by women group?

(B) Whether company can accept the total supply on request of women group?

4)a)ii)3m,MDTP10, 4)a)ii)3m,Sept2024

Ans - According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of acceptance of performance at time other than agreed upon -

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

In the instant case,

(A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.

(B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agreed.

20 - Explain any five circumstances under which contracts need not be performed with the consent of both the parties. 5)c)6m,MDTP1, RTP,Sept2024, 5)c)6m,MTP1,June2024

Ans - Under following circumstances, the contracts need not be performed with the consent of both the parties:

i) Novation: Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)

ii) Rescission: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)

(iii) Alteration: Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)

(iv) Remission: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)

(v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.

(vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

19 - Mr. J entered into an agreement with Mr. S to purchase his house for ` 20 lakh, within three months. He also paid ` 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid.

4)a)i)4m,MDTP8,9, 4)a)i)4m,MTP2,Jan2025, 4)a)i)4m,June2024

Ans - According to section 56 of the Indian Contract Act, 1872, an agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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

In the instant case, Mr. J entered into a contract with Mr. S to purchase his house for ` 20 lakh, with a token payment of ` 50,000. The agreement included a condition that the sale would be completed within three months. Before the completion of the sale, the house was demolished by the local administration. This event made it impossible for Mr. S to sell the house to Mr. J as agreed.

In this situation, Mr. J is required to refund ` 50,000 token money paid to Mr. S, as the contract to sell the house has become void due to the demolition of the house by the local administration, as a result of which it becomes impossible to sell the house on the part of S.

18 - T owes G, the following debts as per the table given below:

Amount of the Debt (in `)	Position of Debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

i) A cheque of ` 12,500

ii) A cheque of ` 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.

1)a)4m, Dec2023

Ans - As per the provisions of Section 59 of the Indian Contract Act, 1872, 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.

As per the provisions of Section 61 of the Indian Contract Act, 1872, 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 payment shall be applied in discharge of each proportionably.

In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.

Since one of the issued cheques was exactly the amount of the debt due i.e. of ` 12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of ` 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Hence cheque of ` 12,500 will be appropriated against the debt of ` 12,500 which is due on 1st April, 2022. As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of ` 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, ` 2,500 will be appropriated for the first debt and ` 1,500 will be appropriated towards the second debt.

17 - 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 adjusted ` 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?**

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?

RTP, Jan2025, RTP, Dec2023

Ans - 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.

16 - Mr. Sooraj promises Mr. Manoj to paint a family picture for ` 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj 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.

4)a)ii)4m,MDTP4, RTP,June2024, 4)a)ii)4m,MTP3,June2024, 3)b)ii)4m,June2023

Ans - 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. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

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

15 - Mr. Harish owes payment of 3 bills to Mr. Ashish as on 31st March, 2022. (i) ` 12,120 which was due in May 2018. (ii) ` 5,650 which was due in August 2020 (iii) ` 9,680 which was due in May 2021. Mr. Harish made payment on 1st April 2022 as below without any notice of how to appropriate them:

- i) A cheque of ` 9,680**
- ii) A cheque of ` 15,000**

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

RTP, June 2023, Sim, ICAI Module

Ans - If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either, the law will allow appropriation of debts in order of time.

In the present case, Mr. Harish had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Harish that it will be against the bill of exact amount. Hence cheque of ` 9,680 will be appropriated against the bill of ` 9,680 which was due in May 2021.

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

Hence, Mr. Ashish can appropriate the same against the debt of ` 12,120 which was due in 2018 and balance against ` 5650 which was due in August 2020.

14 - Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

i) Unit - 3

ii) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J. **3)b)6m,MTP2,Dec2022**

Ans - As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.

13 - 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. **RTP,Dec2022**

Ans - 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.

12 - Mr. Singhanian entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhanian promised to pay ` 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhanian terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

(a) Can Mr. Singhanian terminate the contract with Mr. Sonu?

(b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhanian allows him to perform without saying anything?

(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhanian allows him to perform without saying anything? **RTP, June 2022**

Ans - According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Therefore, in the instant case,

(a) As Mr. Sonu could not perform as per the contract, Mr. Singhanian can repudiate the contract.

(b) In the second situation, as Mr. Singhanian allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhanian had given his assent to continue the contract. Mr. Singhanian cannot terminate the contract however he can claim damages from Mr. Sonu.

(c) In case Mr. Singhanian allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhanian had given his assent for performance by third party. Now Mr. Singhanian cannot terminate the contract nor can claim any damages from Mr. Sonu.

11 - Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?

6)a)5m, MTP2, June 2023, 6)a)5m, MTP2, Dec 2022, 6)a)5m, MTP1, June 2022, 6)a)5m, June 2021

Ans - According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise becomes impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

Effect of impossibility: The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

10 - What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:

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

RTP, Sept2024, RTP, June2021, ICAI Module

Ans - (a) The contract is void because of its initial impossibility of performance.

(b) Time is essence of this contract. By the time apples reached Raman, they were already rotten. The contract is discharged due to destruction of the subject matter of contract.

(c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.

(d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

09 - Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

1)a)i)2m,MDTP3, 1)a)i)2m,MTP2,June2024, 3)c)i)2m,Dec2020

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

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

08 - "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts. RTP,June2020

Ans - Obligations of parties to contracts (Section 37 of the Indian Contract Act, 1872)

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

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

Example 1 - A promises to deliver goods to B on a certain day on payment of ` 1,00,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ` 1,00,000 to A's representatives.

Example 2 - A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill.

Analysis of Section 37

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

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

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

07 - Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ` 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

- i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?**
- ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?**

3)c)6m, June 2019, Sim, ICAI Module

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

- i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.**
- ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.**

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

06 - X, Y and Z jointly borrowed ` 1,50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

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

1)i)4m,MTP1,Dec2020, RTP,Dec2019, Sim,ICAI Module

Ans - Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

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

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

As per the provisions of above sections,

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

05 - Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2024, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly

within a period of 10 days of the contract. Mr. Vikas also paid an amount of ` 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2024 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2024 for which Mr. Vikas did not agree. On 1st August, 2024, Mr. Gaurav claimed compensation of ` 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ` 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

4)a)i)4m,MDTP6, 4)a)i)4m,MTP2,Sept2024, 3)b)6m,MTP2,June2021,
3)b)6m,MTP1,June2019, 1)a)4m,Dec2018

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

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

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ` 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

04 - Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872.

2)a)7m,MTP2,Dec2018

Ans - As per section 40 of the Indian Contract Act, 1872, the promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

i) Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or

diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

ii) Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

iii) Legal Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

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

v) Joint promisors: When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

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

Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period.

1)a)4m,MTP1,Dec2018, ICAI Module

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

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

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

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

02 - Krish, Kanya and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kanya become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

1)a)4m,MTP2,June2019, 1)a)4m,June2018

OR

A, B, C and D are the four partners in a firm. They jointly promised to pay ` 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ` 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.

1)a)4m,MTP2,Dec2022, 1)a)4m,Dec2021, RTP,Dec2018

Ans - Joint promisors (Section 42 of the Indian Contract Act, 1872)

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43)

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.

OR

In the instant case, A, B, C and D have jointly promised to pay ` 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only ` 50,000. A is compelled to pay the whole amount to F.

Hence, A is entitled to receive ` 50,000 from C and ` 2,75,000 from D, as worked out below:

From C ` 50,000 = (C's Liability ` 1,50,000 Less: Amount he could not pay ` 1,00,000).

From D ` 2,75,000 = (D's Liability ` 1,50,000 + 1/2 of liability of B (Loss) $(1,50,000 \times 1/2)$ i.e. ` 75,000 + 1/2 of C's liability (Loss) $(1,00,000 \times 1/2)$ i.e., ` 50,000) In other words, equal proportion i.e., ` 5,50,000 (i.e. ` 6,00,000 - ` 50,000) / 2.

Thus, total amount A can receive from C and D comes to ` 3,25,000 (50,000 + 2,75,000)

Q1 - A received certain goods from B promising to pay ` 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays ` 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ` 1,00,000. Discuss whether the contention of B is right?

RTP, June 2018

Ans - As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e. ` 40,000 and not for the whole amount.

-----XXX-----



CA Nikesh Agrawal

CA Foundation May 2025

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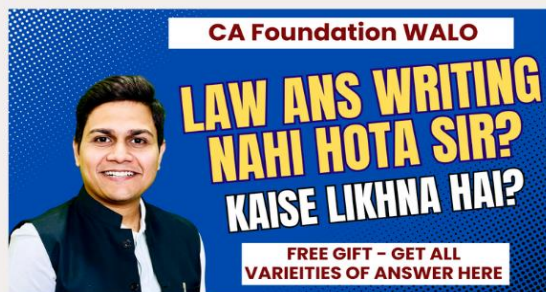
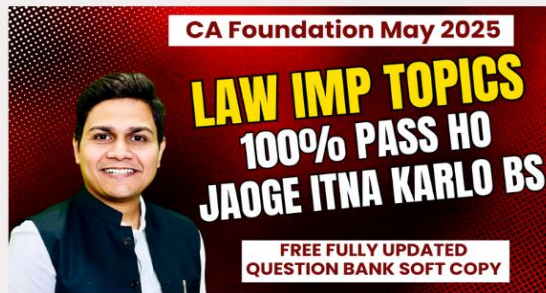
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Chapter: 2 - Indian Contract Act, 1872

Unit: 5 - Breach of Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

18 - In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of The Indian Contract Act, 1872.

5)c)i)3m,MDTP7,10, 5)c)i)3m,MTP1,Jan2025, 3)c)i)3m,Sept2024

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

Special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

17 - Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in 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 to 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?

RTP,Sept2024, 3)c)6m,MTP1,Dec2022, RTP,June2022

Ans - 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 a 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.

16 - Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872?

1)a)4m,MDTP5, 1)a)i)5m,MTP1,Sept2024, 1)a)4m,MTP2,June2023,
1)a)4m,MTP1,June2022, ICAI Module

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

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

15 - How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end?

5)c)6m,MDTP5, 5)c)6m,MTP1,Sept,2024, 2)a)7m,MTP1,June2021, 2)a)7m,MTP1,June2020,
2)a)7m,MTP2,June2019, 2)a)7m,MTP1,June2018

Ans - A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

i) Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

1) Actual performance; or (2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

ii) Discharge by mutual agreement: Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.

iii) Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:

- a) an unforeseen change in law;
- b) the destruction of the subject-matter essential to that performance;
- c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;
- d) the declaration of a war (Section 56).

(iv) Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

(v) Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

(vi) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise

the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

(vii) Promisee may waive or remit performance of promise: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract may be discharged by remission. (Section 63)

(viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance: If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

(ix) Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

14 - "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Also, discuss the effect of anticipatory breach of contracts under the Indian Contract Act, 1872.

3)c)6m,MDTP6, 3)c)6m,MDTP1, 3)c)6m,MTP2,Sept2024, 3)c)6m,MTP1,June2024,
3)b)7m,MTP1,June2023, RTP,June2022, 2)a)7m, MTP1,Dec2021, 2)a)7m,MTP2,June2021,
2)a)7m,MTP1,Dec2020, 2)a)7m,MTP1,Dec2019, 2)a)7m,MTP1,June2019, RTP,Dec2018,
ICAI Module

OR

Where a party to a contract refuses altogether to perform, or is disabled from performing his part of it, the other party has a right to rescind it. Discuss this statement and the effects of such refusal under the provisions of The Indian Contract Act, 1872

5)c)6m,MDTP9, 5)c)6m,June2024

Ans - An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

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

(1) To either treat the contract as rescinded and sue the other party for damages for breach of contract immediately without waiting until the due date of performance; or

(2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

OR

Add - Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows:

"When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

13 - Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ` 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

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

RTP, June 2024

OR

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?

1)a)4m, June2022

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

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

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

In the given case, (i) Yes, the hotel has the right to end the contract with Rahul, the DJ.

(ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

OR

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).

12 - Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872?

4)a)i)4m,MTP1,June2024

Ans - "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

11 - A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

1)a)iii)3m,MDTP3, 1)a)iii)2m,MTP2,June2024, 3)c)iii)2m,Dec2020

Ans - Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for

specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

10 - M Ltd. contract with Shanti Traders to make and deliver certain machinery to them by 30th June 2023 for ` 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ` 12.75 lakhs. Due to this, Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

4)a)7m,MDTP3, 4)a)7m,MTP2,June2024, 3)c)6m,MTP1,Dec2019, 3)c)6m,June2018, RTP,June2018

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

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

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

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

6)b)6m,MDTP3, 6)b)6m,MTP2,June2024, RTP,June2020

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

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

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

The claim for quantum meruit arises in the following cases:

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

08 - On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @`900; 'M'@ 1,000 and 'L' @ 1,100 per piece have to be supplied on or before 31st May, 2023.

However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to

the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ` 1,000; ` 1,100; and ` 1,200 for 'S', 'M' and 'L' sizes respectively.

Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872.

3)b)ii)3m, Dec2023

Ans - As per the provisions of Section 39 of the Indian Contract Act, 1872, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

- i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or
- ii) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

Important Note: The answer can also be given as per Section 73 of the Indian Contract Act, 1872 which lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ` 90,000 [300 piece @ ` 100 (Small), 300 piece @ ` 100 (Medium) and 300 piece @ ` 100 (Large)].

07 - Shital was a classical dancer. She entered into an agreement with Sharad Vidya Mandir for 50 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ` 8,000/- 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 Sharad Vidya Mandir has right to terminate the contract?

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

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

RTP, Dec2023

Ans - Section 39 of the Indian Contract Act, 1872 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 terms 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, Shital could not perform as per the terms of contract, Sharad Vidya Mandir can terminate the contract.

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

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

06 - "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872.

6)a)5m,MTP2,Dec2023, 6)a)5m,June2022, RTP,June2021, ICAI Module

Ans - Liquidated damages is a genuine pre-estimate of compensation of damage for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

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

Distinction between liquidated damages and penalty

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

Q5 - Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

RTP, Dec2022

Ans - Vindictive or Exemplary damages

These damages may be awarded only in two cases:

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
- (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (*Gibbons v West Minister Bank*)

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

- i) A cheque of ` 9,680**
- ii) A cheque of ` 15,000**

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

3)b)6m, MTP2, Dec2021

Ans - If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

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

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

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

03 - "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract".

Explain.

6)a)5m, MTP1, June2021, 6)a)5m, MTP1, June2020

Ans - Effect of a Refusal of Party to Perform Promise

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

From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

Q2 - 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's' contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

RTP, Dec2020, 3)b)6m, MTP2, June2019, 3)b)6m, MTP2, Dec2018, 3)b)7m, MTP1, June2018, ICAI Module

Ans - BREACH OF CONTRACT- DAMAGES: Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

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

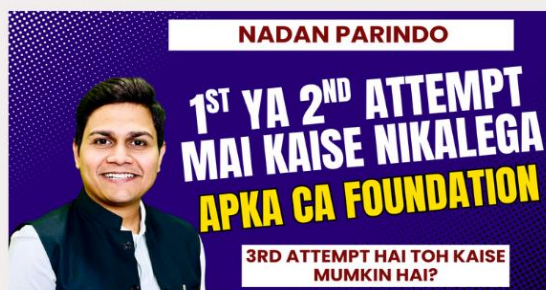
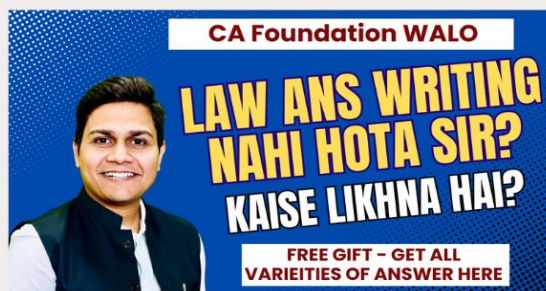
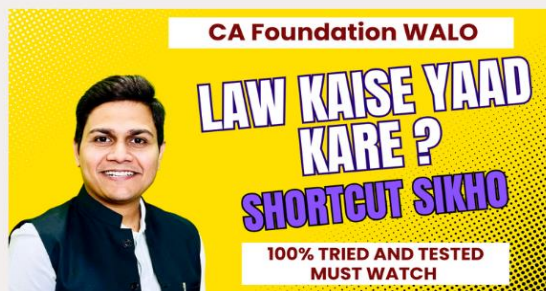
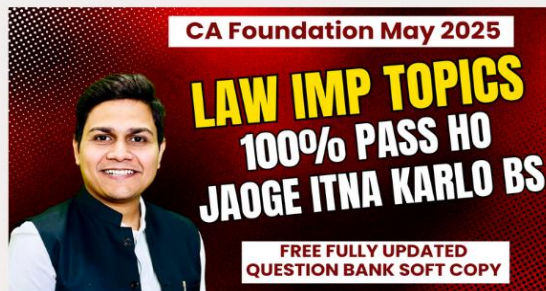
If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ` 750/- (i.e. 1000 water bottles x 0.75 paise).

Q1 - What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

RTP, Dec2019, 6)a)5m, MTP1, Dec2018

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

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Chapter: 2 - Indian Contract Act, 1872

Unit: 6 - Contingent & Quasi Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

11 - Mr. L let out his residential house to Mr. M for ` 50,000 p.m. for a period of one year. According to the Rent agreement, electricity bill will be paid by Mr. L. But Mr. L could not pay electricity dues up to 5 months, due to his financial hardships. The Electricity Board sent the notice of disconnection, if it is not paid within a week's time. To avoid all this, Mr. M paid the electricity bill of ` 50,000 with penalty. Later on, L refused to reimburse ` 50,000 and argued that he has paid bill voluntarily because of his own interest. Decide with reference to provisions of the Indian Contract Act, 1872 whether Mr. M is entitled to be reimbursed by Mr. L?

1)a)ii)4m,MDTP8,10, 1)a)ii)3m,MTP2,Jan2025, 1)a)i)3m,Sept2024

Ans - According to Section 69 of the Indian Contract Act, 1872, a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

In the instant case, Mr. M paid the electricity bill to avoid the disconnection that was pending due to Mr. L's failure to fulfil his contractual obligation. Hence, Mr. M is entitled to be reimbursed ₹ 50,000 from Mr. L.

10 - Raghav found gold and diamond studded wristwatch value approximately 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not turn up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he incurred 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872:

- (A) Gifting the wristwatch to his son.
- (B) Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.
- (C) Retaining the possession of wristwatch till recovery of lawful expenses.
- (D) Selling of wristwatch for recovery of expenses.

4)a)i)4m,MDTP10, 4)a)i)4m,Sept2024

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

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

The right of finder of lost goods- may sue for specific reward offered [Section 168]: The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

- (1) when the thing is in danger of perishing or of losing the greater part of its value, or
- (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

(A) Gifting the wristwatch to his son Mahesh is unlawful. Raghav had no ownership rights over the watch and could not legally transfer it to someone else.

(B) Warning Madhav to Sue for Recovery of Lawful Expenses: Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.

(C) Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses: Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.

(D) Selling of Wristwatch for Recovery of Expenses: the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and selling the watch would be unlawful.

09 - Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of ` 1,00,000 from Bhavesh for payment of his college fees and to purchase books and agreed to repay by 31st December, 2023. Amit possesses assets worth ` 9 lakhs. On due date,

Amit fails to pay back the loan to Bhavesh. Bhavesh now wants to recover the loan from Amit out of his (Amit's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Bhavesh would succeed. RTP, Sept2024, Sim, ICAI Module

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

In the instant case, since the loan given to Amit is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse Bhavesh.

Hence, Bhavesh can proceed against the assets of Amit.

08 - What constitutes a contingent contract under the Indian Contract Act, 1872, and what are its essential elements? 6)b)6m,MDTP5, 6)b)6m,MTP1,Sept,2024

OR

What is the meaning of contingent contract? Write briefly its essentials. Also, explain rules relating to enforcement of a contingent contract.

6)b)6m,MDTP8,9, 6)b)6m,MTP2,Jan2025, 6)b)6m,June2024, 2)a)7m,MTP2,June2023, 2)a)7m,MTP1,June2022, 2)a)7m,June2021, 6)a)5m,MTP1,Dec2020, RTP,June2020, RTP,June2019, 2)a)7m,June2018

Ans - Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872)

"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen". Contracts of Insurance, indemnity and guarantee fall under this category.

Meaning of collateral Event: Collateral event is "an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise".

Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

OR

Rules Relating to Enforcement of a contingent contract:

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

(a) Enforcement of contracts contingent on an event happening: Section 32 says that "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void".

(b) Enforcement of contracts contingent on an event not happening: Section 33 says that "Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before".

(c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.

Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies".

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

(e) Contingent on specified event not happening within fixed time: Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

(f) Contingent on an impossible event (Section 36): Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

07 - P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?
RTP, June 2023, ICAI Module

Ans - Section 69 of the Indian Contract Act, 1872 states that a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other.

In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party, P made the payment and can recover the same from D.

06 - Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessities to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessities to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

- (i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?
 - (ii) What is the maximum amount- of money that can be recovered by Mr. M?
 - (iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother?
- 3)b)6m, Dec 2022**

Ans - (i) Claim for necessities supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. In the instant case, Mr. M supplied the food and other necessities to Mr. Y (who lost his mental

balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

05 - PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of ` 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.

Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19.

RTP, Dec2021

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

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

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

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

04 - Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872.

6)a)5m, Dec2020

Ans - Distinction between Wagering Agreement and Contract of Insurance

S.N	Basis	Wagering Agreement	Contract of Insurance
	Meaning	It is a promise to pay money or money's worth on the happening or non-happening of an	It is a contract to indemnify the loss.

		uncertain event.	
	Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of the insurance contract is the mutual consideration (premium and compensation amount).
	Insurable Interest	There is no property in case of wagering agreement.	Insured party has an insurable interest in the life or property sought to be insured.
	Contract of Indemnity	Loser has to pay the fixed amount on the happening of an uncertain event.	Except for life insurance, the contract of insurance indemnifies the insured person against loss
	Enforceability	It is void insured and unenforceable agreement	It is valid and enforceable
	Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
	Public Welfare	They have been regarded as against the public welfare.	They are beneficial to the society.

03 - Explain the-term 'Quasi Contracts' and state their characteristics/features.

6)b)6m,MDTP7, 6)b)6m,MTP1,Jan2025, RTP,June2024, 6)a)5m,MTP2,June2022, 6)a)5m,Dec2021, 6)b)5m,MTP2,Dec2021, RTP,Dec2020, ICAI Module

Ans - Quasi Contracts: Already explained in Answer - 1

The salient features of a quasi contract are:

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.

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

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

1)a)i)4m,MDTP4, Sim,RTP,Jan2025, 1)a)i)4m,MTP3,June2024, Sim,RTP,Dec2023, Sim,1)a)4m,Dec2019, ICAI Module

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

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

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

01 - What is Quasi Contract? Elaborate the cases which are deemed as Quasi Contract.

6)a)5m,MTP1,Dec2022, RTP,Dec2019

Ans - Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

The following are the cases which are deemed as Quasi Contract:

- a) Claim for necessities supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in

life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

(b) Payment by an interested person (Section 69): A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(c) Obligation of person enjoying benefits of non-gratuitous act (Section 70): In term of section 70 of the Act "where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered".

(d) Responsibility of finder of goods (Section 71): 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

-----XXX-----



CA Nikesh Agrawal

CA Foundation May 2025

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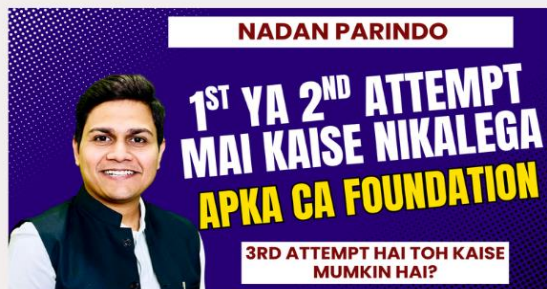
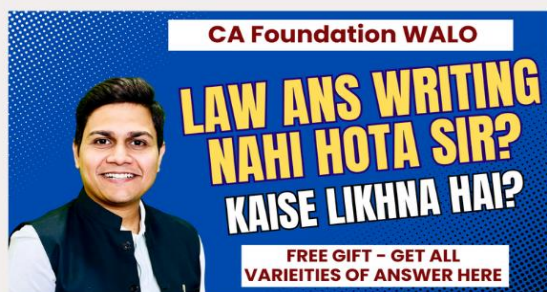
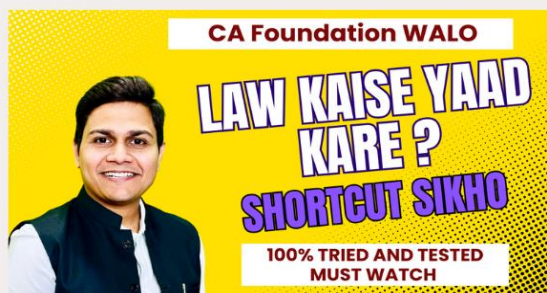
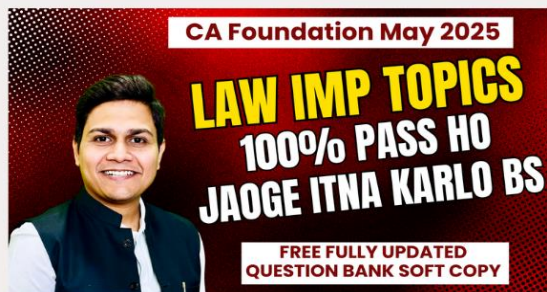
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Chapter: 2 - Indian Contract Act, 1872

Unit: 7 - Contract of Indemnity & Guarantee

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

15 - Mr. R extended a loan to Mr. D with X, Y, and Z as sureties. Each surety executed a bond with varying penalty amounts, X with a penalty of ` 10,000, Y with ` 20,000 and Z with ` 40,000, in the event of Mr. D's failure to repay the borrowed money to Mr. R. Examine the liabilities of the sureties in accordance with the Indian Contract Act, 1872, when Mr. D defaults to the tune of ` 42,000. Additionally, assess the situation, if there is no contractual arrangement among the sureties. 4)a)i)MDTP2,7, 4)a)i)4m,MTP1,Jan2025

Ans - As per section 146 of the Indian Contract Act, 1872, when two or more persons are co-sureties for the same debt either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Section 147 provides that the principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

In the given question, Mr. D makes a default of ` 42,000, and X, Y and Z as sureties have executed the bond with varying penalty amounts. Hence, X is liable to pay ` 10,000, and Y and Z ` 16,000 each.

In the given case, if there is no contractual arrangement among the sureties, they would be liable for equal contribution. Hence, X, Y and Z will be liable to pay ` 14,000 each.

14 - Answer the following as per the provisions of the Indian Contract Act, 1872:

i) Unit 9

ii) State the rights of Indemnity-holder when sued.

6)b)ii)2m,MDTP10, 6)b)ii)2m,MTP2,Jan2025, 6)b)ii)2m,Sept2024, ICAI Module

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.

13 - Explain any four differences between Contract of Indemnity and Contract of Guarantee.

6)b)ii)4m, Sept2024

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.

12 - Due to urgent need of money amounting to ` 3,00,000, Pawan approached Raman and asked him for the money. Raman lent the money on the guarantee of Suraj and Tarun. Pawan makes default in payment and Suraj pays full amount to Raman. Suraj, afterwards, claimed contribution from Tarun but Tarun refused to contribute on the basis that there is

no contract between Suraj and him. Examine referring to the provisions of the Indian Contract Act, 1872, whether Tarun can escape from his liability.

4)a)ii)3m,MDTP5, 4)a)ii)3m,MTP1,Sept2024

Ans - Equality of burden is the basis of Co-suretyship. This is contained in section 146 of the Indian Contract Act, 1872, which states that "unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

Accordingly, on the default of Pawan in payment, Tarun cannot escape from his liability. Both the sureties Suraj and Tarun are liable to pay equally, in absence of any contract between them.

11 - 'Sooraj' guarantees 'Vikas' for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March 2023. 'Vikas' supplied goods of ` 30,000 on 01.03.2023 and of ` 20,000 on 03.03.2023 to 'Nikhil'. On 05.03.2023, 'Sooraj' died in a road accident. On 10.03.2023, being ignorant of the death of 'Sooraj', 'Vikas' further supplied goods of ` 40,000. On default in payment by 'Nikhil' on due date, 'Vikas' sued legal heirs of 'Sooraj' for recovery of ` 90,000. Describe, whether legal heirs of 'Sooraj' are liable to pay ` 90,000 under the provisions of Indian Contract Act, 1872. What would be your answer, if the estate of 'Sooraj' is worth ` 45,000 only?

RTP,Sept2024

Ans - According to section 131 of Indian Contract Act, 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Sooraj' was surety for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March, 2023. 'Vikas' supplied goods of ` 30,000, ` 20,000 and of ` 40,000 on 01.03.2023, 03.03.2023 and 10.03.02023 respectively. 'Sooraj' died in a road accident, but this was not in the knowledge of 'Vikas'. When 'Nikhil' defaulted on payment, 'Vikas' filed suit against legal heirs of 'Sooraj' for recovery of full amount i.e. ` 90,000.

On the basis of above, it can be said in case of death of surety ('Sooraj'), his legal heirs are liable only for those transactions which were entered before 05.03.2023 i.e. for ` 50,000. They are not liable for the transaction done on 10.03.2023 even though Vikas had no knowledge of death of Sooraj.

Further, if the worth of the estate of deceased is only ` 45,000, the legal heirs are liable for this amount only.

10 - R owns an electronics store. P visited the store to buy a water purifier priced at 54,000/-. He specifically requested R for a purifier with a copper filter. As P wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, R demands a guarantor for the transaction. S (a friend of P) came forward and gave the guarantee for payment of water purifier. R sold P, a water purifier of a specific brand. P made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act 1872, the liability of S as a guarantor to pay the balance price of water purifier to R.

What will be your answer, if R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither P nor S was aware of this fact and upon discovering the truth, P refused to pay the price. In response to P's refusal, R filed the suit against S, the guarantor. Explain with reference to the Indian Contract Act 1872, whether S is liable to pay the balance price of water purifier to R?

1)a)7m,MDTP7,9, 1)a)7m,MTP1,Jan2025, RTP,Jan2025, 1)a)7m,June2024

Ans - As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default.

In this case, S has given a guarantee for P's payment obligation towards R. When P defaulted after making four monthly instalments and became insolvent, S's liability as a guarantor will come into existence.

According to Section 128 of the Act, the liability of the surety is co extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of ₹ 30,000 to R. [54,000-(4x6,000)]

In the second situation, R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here R misrepresented the filter type and both P and S were unaware of this fact. The creditor (R) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from S will be considered to be invalid.

Consequently, S cannot be held liable to pay the balance price of the water purifier to R.

09 - Explain in brief with reference to the provisions of the Indian Contract Act, 1872, what are the rights enjoyed by Surety against the Creditor, the Principal Debtor and Co-Sureties?

3)c)6m,MDTP8,9, 3)c)6m,MTP2,Jan2025, 3)c)6m,June2024

Ans - In terms of the provisions of the Indian Contract Act, 1872, the surety enjoys the following rights:

- (a) Rights against the creditor;
- (b) Rights against the principal debtor;
- (c) Rights against co-sureties.

Right against the Creditor

- a) Surety's right to benefit of creditor's securities [Section 141]: A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.
- b) Right to set off: If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.
- c) Right to share reduction: The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

- a) Rights of subrogation [Section 140 of the Indian Contract Act, 1872]: Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

b) Implied promise to indemnify surety [Section 145]: In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

Rights against co-sureties

"Co-sureties (meaning)- When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties"

a) Co-sureties liable to contribute equally (Section 146): Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

b) Liability of co-sureties bound in different sums (Section 147): The principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

08 - Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

6)b)6m,MDTP4, 6)b)6m,MTP3,June2024, ICAI Module

Ans - Section 124 of the Indian Contract Act, 1872 states that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".

Section 126 of the Indian Contract Act, 1872 states that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default" is called a "contract of guarantee".

The conditions under which the guarantee is invalid, or void is provided in section 142, 143 and 144 of the Indian Contract Act, 1872. These include:

- i) Guarantee obtained by means of misrepresentation.
- ii) Guarantee obtained by means of keeping silence as to material circumstances.
- iii) When a contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

07 - Sarthak is employed as a cashier on a monthly salary of ` 50,000 by ABC bank for a period of three years. Mohit gave surety for Sarthak's good conduct. After nine months, the financial position of the bank deteriorates. Then Sarthak agrees to accept a lower salary of ` 40,000 per month from the Bank. Two months later, it was found that Sarthak had misappropriated cash from the time of his appointment. What is the liability of Mohit taking into account the provisions of the Indian Contract Act, 1872?

RTP, June 2024, Sim, ICAI Module

OR

Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years' contract at a monthly salary of ` 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay ` 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ` 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's appointment.

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Ans - According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the instant case, the creditor has made a variance (i.e. change in terms) without the consent of surety. Thus, surety is discharged as to the transactions subsequent to the change.

Hence, Mohit is liable as surety for the loss suffered by the bank due to misappropriation of cash by Sarthak during the first nine months but not for misappropriations committed after the reduction in salary.

OR

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation.

06 - A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability.

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Ans - According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is discharged or by any act or omission for the creditor the legal consequence of which is the discharge of the principal debtor.

In the given case, B omits to supply the necessary construction material. Hence, C is discharged from his liability.

05 - Mr. D was in urgent need of money amounting to ` 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability?

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Ans - Co-sureties liable to contribute equally (Section 146 of the Indian Contract act, 1872):

Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

04 - A agrees to sell goods to B on the guarantee of C for the payment of the price of goods in default of B. Is the agreement of guarantee valid in each of the following alternate cases:

Case 1. If A is a Minor

Case 2: If B is a Minor

Case 3: If C is a minor

ICAI Module

Ans - Case 1: The agreement of guarantee is void because the creditor is incompetent to contract.

Case 2: The agreement of guarantee is valid because the capability of the principal debtor does not affect the validity of the agreement of the guarantee.

Case 3: The agreement of guarantee is void because the surety is incompetent to contract.

03 - S asks R to beat T and promises to indemnify R against the consequences. R beats T and is fined ` 50,000. Can R claim ` 50,000 from S. ICAI Module

Ans - R cannot claim ` 50,000 from S because the object of the agreement was unlawful. A contract of indemnity to be valid must fulfil all the essentials of a valid contract.

02 - Manoj guarantees for Ranjan, a retail textile merchant, for an amount of ` 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months.

After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ` 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ` 40,000? ICAI Module

Ans - Discharge of Surety by Revocation: As per section 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.

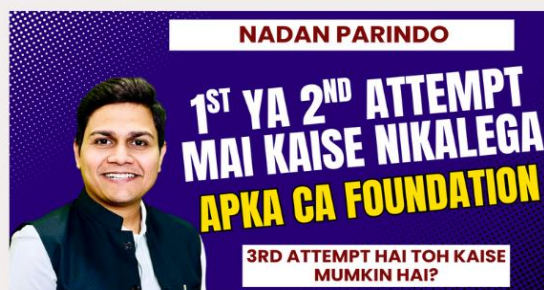
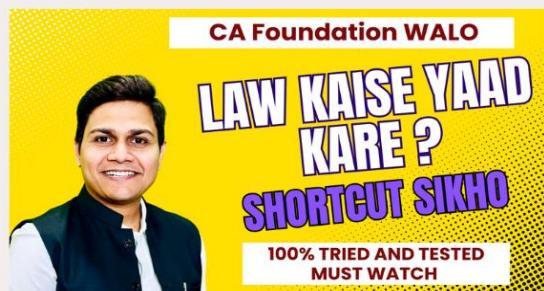
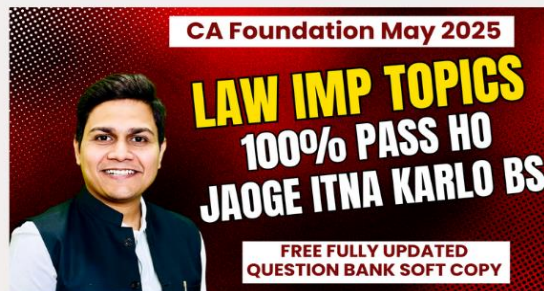
However, liability of Manoj for previous transactions (before revocation) i.e. for ` 40,000 remains. He is liable for payment of ` 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

01 - 'C' advances to 'B', ` 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ` 2,00,000 without knowledge of 'A'. 'C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth ` 80,000, under the Indian Contract Act, 1872. ICAI Module

Ans - **Surety's right to benefit of creditor's securities:** According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In the instant case, C advances to B, ` 2,00,000 rupees on the guarantee of A. C has also taken a further security for ` 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. ` 80,000 and will remain liable for balance ` 1,20,000.

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Chapter: 2 - Indian Contract Act, 1872

Unit: 8 - Bailment & Pledge

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

11 - In accordance with the provisions of The Indian Contract Act, 1872, Answer the following :

i) Rights of Bailor against any wrong doer (Third Party)

ii) Duties of Pawnee 5)c)6m,MDTP8,10, 5)c)6m,MTP2,Jan2025, 4)a)i)4m,Sept2024

Ans - Suit by bailor & bailee against wrong doers [Section 180 of the Indian Contract Act, 1872]: If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

(ii) Duties of the Pawnee

Pawnee has the following duties:

- a. Duty to take reasonable care of the pledged goods.
- b. Duty not to make unauthorized use of pledged goods.
- c. Duty to return the goods when the debt has been repaid or the promise has been performed.
- d. Duty not to mix his own goods with goods pledged.
- e. Duty not to do any act which is inconsistent with the terms of the pledge
- f. Duty to return accretion to the goods, if any.

10 - R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why under the provisions of the Indian Contract Act, 1872?

4)a)ii)3m,MDTP6, 4)a)ii)3m,MTP2,Sept2024, ICAI Module

Ans - Section 161 of the Indian Contract Act, 1872 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part. Hence, in the instant case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.

09 - Mr. Stefen owns a chicken farm near Gurugram, where he breeds them and sells eggs and live chicken to retail shops in Gurugram. Mr. Flemming also owns a similar farm near

Gurugram, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel, so he had pledged his farm to Mr. Stefen for one year and received a deposit of ` 25 lakhs and went away. At that point of time, the stock of live birds was 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs. Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case. RTP, Sept2024

Ans - According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e. the live birds and eggs).

Right of Mr. Flemming: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged.

08 - State the essential elements of a contract of bailment.

5)c)6m,MDTP4, 6)b)6m,MDTP2, 6)b)6m,MDTP1, 6)b)ii)6m,MTP1,June2024,
5)c)6m,MTP3,June2024, ICAI Module

Ans - Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:

- (i) Delivery of goods—The essence of bailment is delivery of goods by one person to another.
- (ii) Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
- (iii) Return of goods in specific—The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
- (iv) Ownership of goods—In a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.
- (v) Property must be movable—Bailment is only for movable goods and never for immovable goods or money.

07 - Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

(i) Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.

(ii) Seizure of goods by customs authorities.

RTP, June 2024, ICAI Module

Ans - As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

For a bailment to exist, the bailor must give possession of the bailed property and the bailee must accept it.

i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Vikas, Section 148, of the Indian Contract Act, 1872 shall not be applicable.

ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists, and section 148 is applicable.

06 - Give differences between Bailment and Pledge.

ICAI Module

Ans - Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

(a) As to purpose: Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.

- (b) As to right of sale: The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
- (c) As to right of using goods: Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
- (d) Consideration: In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
- (e) Discharge of contract: Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

05 - A hires a carriage from B and agrees to pay ` 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B. ICAI Module

Ans - Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

04 - A bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed. ICAI Module

Ans - According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.

Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

03 - 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?

ICAI Module

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.

02 - Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

ICAI Module

Ans - Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

01 - Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

ICAI Module

Ans - Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title. Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

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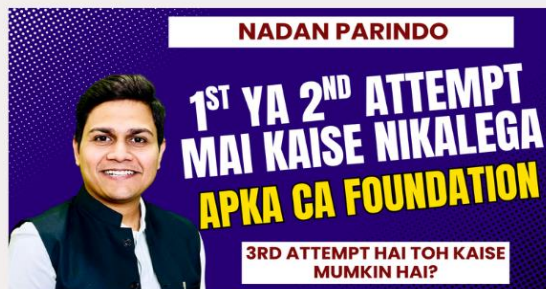
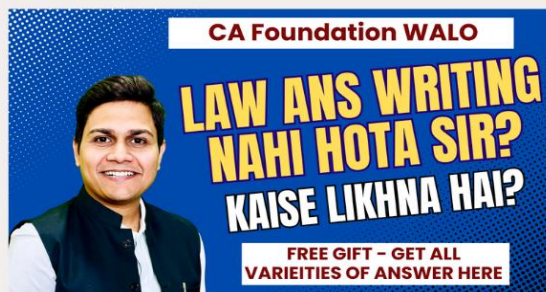
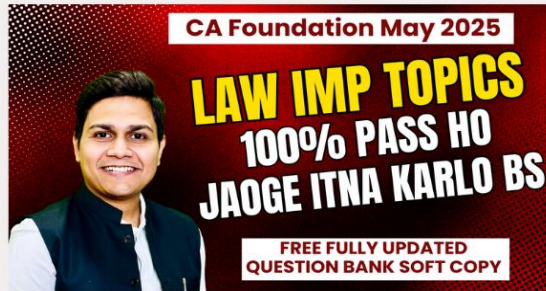
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Chapter: 2 - Indian Contract Act, 1872

Unit: 9 - Agency

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

14 - Both a sub-agent and a substituted agent are appointed by the agent, however, there are some points of distinction between the two. Elaborate any 6 points. 6)b)6m,Jan2025

OR

Both a sub-agent and a substituted agent are appointed by the agent. But, however, there are some points of distinction between the two. Explain any three points under the Indian Contract Act, 1872. 5)c)a)3m,MDTP2

Ans -

S.No.	Sub Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him
5.	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

13 - What are the conditions to be satisfied for an "Agent's authority in an emergency" under the provisions of The Indian Contract Act, 1872? 6)b)6m,Jan2025

Ans - 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.

To constitute a valid agency in an emergency, following conditions must be satisfied:

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.
- (iii) the agent should have acted bonafide and for the benefit of the principal.
- (iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and
- (v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

12 - Answer the following as per the provisions of the Indian Contract Act, 1872:

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.

6)b)i)4m,MDTP10, 6)b)i)4m,MTP2,Jan2025, 6)b)i)4m,Sept2024

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.

11 - Who is considered as an agent under the Indian Contract Act, 1872, and what are the duties and obligations associated with this role? 3)c)6m,MDTP5, RTP,Sept2024

Ans - The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

Agent means a person employed to do any act for another or to represent another in dealing with the third persons and

The principal means a person for whom such act is done or who is so represented.

Duties and obligations of an Agent

i) Duty to follow instructions or customs: According to Section 211, an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

ii) Duty of reasonable care and skill: According to section 212, an agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.

The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

iii) Duty to render proper accounts [Section 213]: An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers. (Anandprasad vs. Dwarkanath)

- iv) Agent's duty to communicate with principal [Section 214]:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.
- v) Duty not to deal on his own account:** Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—
- (a) repudiate the transaction, (Section 215)
 - (b) claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)
- vi) Duty not to make secret profits:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.
- Secret Profit means** any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.
- vii) Duty not to delegate:** According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.
- viii) Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.
- ix) Duty not to use any confidential information received in the course of agency against the principal.**

10 - 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?

1)a)ii)3m,MDTP6, 4)a)ii)3m,MDTP1, 1)a)ii)3m,MTP2,Sept2024, 4)b)ii)3m,MTP1,June2024, ICAI Module

Ans - 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.

09 - Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ` 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

(1) Whether sale of laptops after revoking Shyam's authority is binding on Rama?

(2) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission?

4)a)ii)3m,MDTP8,9, 4)a)ii)MTP1,Jan2025, RTP,Jan2025, 4)a)ii)3m,June2024

Ans - When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

In the instant case,

(1) The revocation of Shyam's authority becomes effective only when it is communicated to and received by Shyam. Since Shyam had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rama was still valid. Hence, the sale of laptops conducted by Shyam is binding on Rama.

(2) Shyam is entitled to receive his commission for the sales made while he still had the authority to sell. Since he sold the laptops before receiving the revocation, he is entitled to his commission as per the initial agreement with Rama.

Amount of Commission: Shyam sold 5 laptops at the price fixed by Rama, which is ` 1 lakh each. The total sales amount to ` 5 lakh. The agreed commission rate is 11% i.e. ` 55,000.

08 - Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

(i) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.

(ii) A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C?

5)c)6m,MDTP3, 5)c)6m,MTP2,June2024

Ans - i) According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

ii) According to section 191 of the Indian Contract Act, 1872, a "Sub agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub-agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

07 - A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ₹ 700. M sells it to D for ₹ 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

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Ans - According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible

to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

06 - State with reason whether the following statement is correct or incorrect:

Ratification of agency is valid even if knowledge of the principal is materially defective.

ICAI Module

Ans - Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

05 - Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ` 20 lakhs in the name of a nominee and then purchased it himself for ` 24 lakhs. He then sold the same house to Mr. Ahuja for ` 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

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Ans - The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

(1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

(2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ` 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

04 - Comment on the statement 'Principal is not always bound by the acts of a sub-agent'.

ICAI Module

Ans - The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Q3 - ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim? ICAI Module

Ans - To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

Q2 - R is the wife of P. She purchased sarees on credit from Nalli. Nalli demanded the amount from P. P refused. Nalli filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nalli would succeed.

ICAI Module

Ans - The position of husband and wife is special and significant case of implied authority. According to the Indian Contract Act 1872, where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessities. However, the implied authority can be challenged by the husband only in the following circumstances.

(1) The husband has expressly forbidden the wife from borrowing money or buying goods on credit.

(2) The articles purchased did not constitute necessities.

(3) Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller.

(4) The creditor had been expressly told not to give credit to the wife.

Further, where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessities, if he does not provide for her maintenance.

Since, none of the above criteria is being fulfilled; Nalli would be successful in recovering its money.

01 - 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.

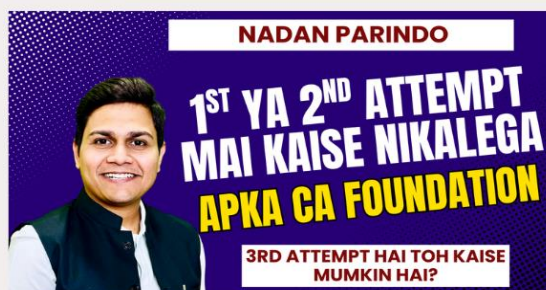
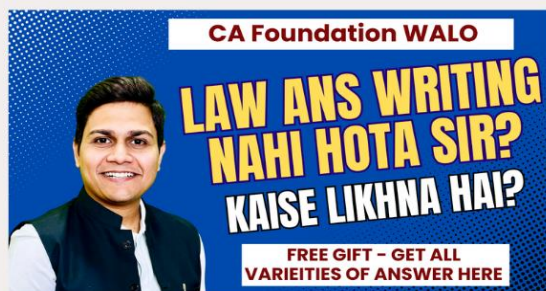
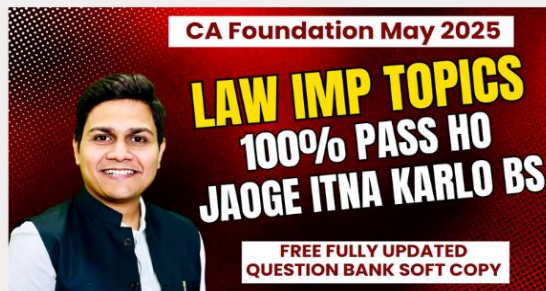
ICAI Module

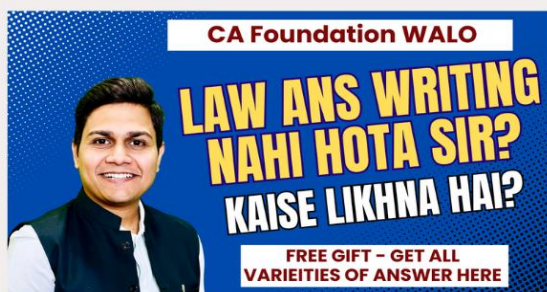
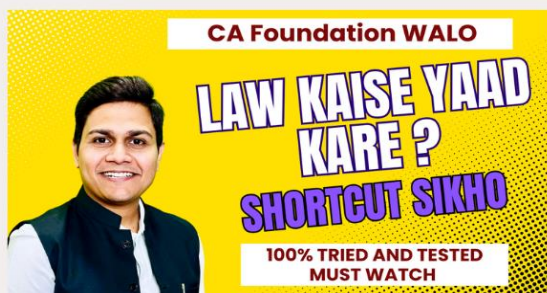
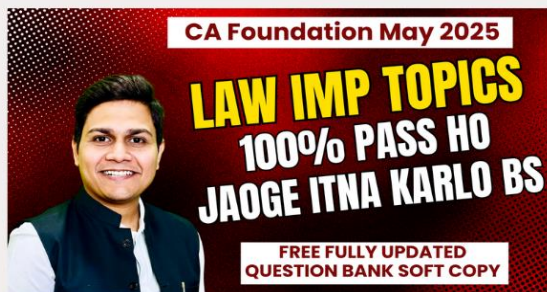
Ans - According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice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

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IMP VIDEOS – SCAN QR

IMP VIDEOS – SCAN QR

Chapter: 3 - The Sale of Goods Act, 1930

Unit: 1 - Formation of the Contract of Sale

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

21 - Kartik agreed to sell his laptop to Vasant for a price to be fixed by Kusum a hardware engineer. However, before the delivery of the laptop, Kartik changed his mind and did not share any particulars and configuration of the laptop with Kusum, which made her unable to do the valuation. Kusum refused to do valuation.

Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it. However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930.

5)a)i)3m,MDTP7,10, 5)a)i)3m,MTP1,Jan2025, 2)a)ii)3m,Sept2024

Ans - Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

In the instant case, as Kusum cannot do valuation of laptop due to non-sharing of particulars and configuration by Kartik who was bound by his promise, the agreement will be void.

The other remedy available to Vasant is that he can claim damages from Kartik as he will be liable for the damages to Vasant who is not at fault.

20 - Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain-

(i) Can Priya take-back the vehicle from Sony?

(ii) Will your answer be different, if Priya had not handed over the vehicle to Sony?

2)a)7m,MDTP8,9, 2)a)7m,MTP2,Jan2025, 2)a)7m,June2024

Ans - Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

- (1) fixed by the contract, or
- (2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
- (3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided. However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.

2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

(i) In the instant case, Priya handed over the keys of her two wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.

(ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

19 - Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930.

1)a)7m,MDTP1, 2)a)7m,MTP1,June2024

Ans - By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be fixed by the contract, or agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third party in the following manner:

- (a) Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
- (b) In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.
- (c) However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

In the instant case, Kapil contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Akhilesh. After, Rahul delivered 600 litres Akhilesh denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil.

On the basis of above provisions and facts, Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

18 - Samar was in search of a second-hand car. For this purpose, he approached "Car Wala 007", a dealer in pre-owned cars. The sales manager of "Car Wala 007" showed him three cars which were standing in the parking lane just outside the office. Samar finalised red Wagon R car. After completing the documenting formalities and receiving the price of car, sales manager of "Car Wala 007" handed over the key of car to Samar. But when Samar was coming to parking area for picking the car, the electric poll fell on the car which badly damaged the car. Samar claimed that repair expenses of the car should be borne by "Car Wala 007" as car was not delivered to him. Referring to the provisions of the Sales of Goods Act 1930, state who will be liable to get the car repaired?

5)a)6m,MTP2,Dec2023

Ans - According to the provisions of the Sale of Goods Act, 1930, there are three modes of delivery, (i) Actual delivery, (ii) Constructive delivery and (iii) Symbolic delivery.

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

In the instant case, Samar purchased a pre-owned car from "Car Wala 007" which was standing in the parking lane just outside of office. After completing the documenting formalities, he received the key of car from sales manager of "Car Wala 007". But when he was coming to parking area for picking the car, the car which badly damaged due to fall of the electric poll on the car.

On the basis of above provisions and facts, it is clear that handing over the key of car is the symbolic delivery of car. Hence, Samar being owner of the car must bear the repair expenses of car.

17 - Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ `1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months. Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which is already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring to the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company recover amount from Ram Bilas Yadav?

5)a)6m,MTP1,Dec2023

Ans - As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Further Section 2(6) defines "future goods" means goods to be manufactured or produced or acquired by the seller after making of the contract of sale.

In the instant case, on the basis of above provisions and facts, it can be said that there was an agreement to sell between Ram Bilas Yadav and Anna Chips Company because the goods under agreement was future goods. Even the payment was made by Anna Chips Company, the property in goods can be transferred only after the goods is ascertained. As the goods was not ascertained, property is not passed to buyer. Hence, Ram Bilas Yadav must return the price to Anna Chips Company.

16 - State the difference between Sale and Agreement to sell.

RTP, June2023

Ans - The differences between Sale and Agreement to sell are as follows:

Basis of difference	Sale	Agreement to sell
Transfer of	The property in the goods	Property in the goods passes to the

property	passes to the buyer immediately.	buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract i.e. contract for which consideration has been paid.	It is an executory contract i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem means right against the whole world.	Creates Jus in personam means rights against a particular party to the contract.
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
In case of insolvency of seller	The official assignee will not be able to take over the goods but will recover the price from the buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
In case of insolvency of buyer	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.

15 - Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.

6)c)7m,MDTP7, 6)c)7m,MTP1,Jan2025, 4)a)6m,Dec2021

Ans - The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Basis of difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

14 - What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

6)c)ii)3m,MDTP4, RTP,Jan2025, 6)c)ii)3m,MTP3,June2024, RTP,Dec2023, 1)c)4m,June2022

Ans - Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930): In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

13 - Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

5)a)i)4m,MDTP6, 5)a)i)4m,MTP2,Sept2024, RTP,Sept2024, RTP,June2023,
5)a)6m,MTP2,June2022, 5)a)6m,MTP2,Dec2021

Ans - As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

12 - X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?

5)a)ii)3m,MDTP4, 5)a)ii)3m,MTP3,June2024, RTP,Dec2021, ICAI Module

OR

Mr. A contracted to sell his swift car to **Mr. B**. Both missed to discuss the price of the said swift car. Later, **Mr. A** refused to sell his swift car to **Mr. B** on the ground that the

agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930? RTP, June 2024, 1)c) 4m, June 2023

Ans - 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. (Section 9 of the Sale of Goods Act, 1930)

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

OR

As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed to discuss the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

11 - Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.

(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?

Sim,2)a)7m,MDTP2,5, Sim,RTP,Jan2025, Sim,5)a)7m,MTP1,Sept2024, RTP,Dec2023, 5)a)6m,MTP2,Dec2022, 5)a)6m,June2022, RTP,Dec2021

Ans - As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid.

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika.

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

RTP, Dec2020

Ans - Destruction of Goods-Consequences:

(i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

(ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so

damaged as no longer to answer to their description in agreement before the risk passes to the buyer.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

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

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

5)a)ii)3m,MDTP3,6,8, 5)a)ii)3m,MTP2,Jan2025, 5)a)ii)3m,MTP2,June2024,
1)c)4m,MTP1,June2023, RTP,June2022, 1)c)4m,MTP1,Dec2020, RTP,Dec2019, ICAI
Module

Ans - (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

(ii) If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.

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

08 - Differentiate between Ascertained and Unascertained Goods with example.

1)c)4m,Dec2018

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

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

07 - Explain the term goods and other related terms under the Sale of Goods Act, 1930.

1)a)4m,MTP2,Dec2018

Ans - "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7) of the Sales of Goods Act, 1930]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

06 - Explain the difference between Sale and Agreement to sell under the Sale of Goods Act, 1930.

1)c)4m,MTP2,June2019, 1)c)4m,MTP1,June2018

Ans - The differences between the sale and agreement to sell is as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract. i.e. contract for which consideration has been paid.	It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.

Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

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

RTP, June 2021, RTP, June 2020, RTP, June 2019, 1)c)4m, MTP1, Dec 2018, RTP, Dec 2018

Ans - Essentials of Contract of Sale

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

- (i) There must be at least two parties.
- (ii) The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
- (iii) A price in money (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.
- (iv) A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale, e.g. competency of parties, legality of object and consideration etc.

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

RTP, June 2018

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

or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

03 - Explain the term "Delivery and its form" under the Sale of Goods Act, 1930?

4)a)6m,MTP1,Dec2022, 1)c)4m,MTP2,June2021, 1)c)4m,MTP1,Dec2019,
1)c)4m,MTP1,June2019, 1)c)4m,June2018, RTP,June2018

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

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

(a) Actual delivery: When the goods are physically delivered to the buyer.

(b) Constructive delivery: When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

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

02 - 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 of old TV set. Is it a valid Contract of Sale of Goods?

Give reasons for your answer.

ICAI Module

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

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

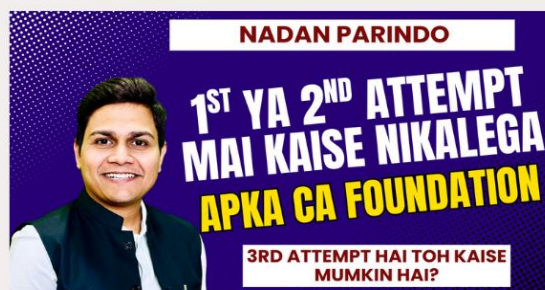
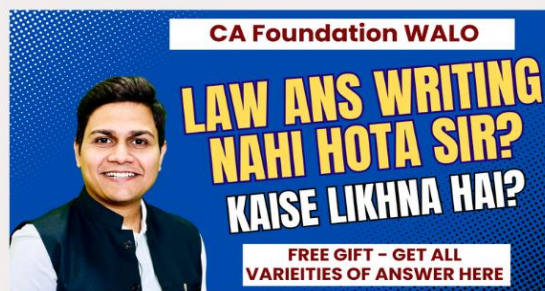
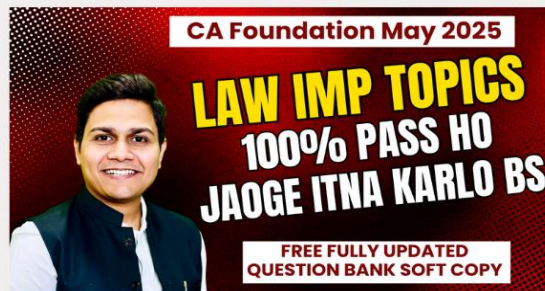
Q1 - A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930? ICAI Module

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.

-----XXX-----

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Chapter: 3 - The Sale of Goods Act, 1930

Unit: 2 - Conditions & Warranties

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

24 - Adarsh visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car.

5)a)ii)3m, Jan2025

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

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

There are two requirements for this condition to apply:

(a) Goods should be bought by description.

(b) The seller should be a dealer in goods of that description.

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

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

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.

Therefore, Adarsh can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.

23 - M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.

On the other hand what is the remedy available to the buyer if he has to accept the entire quantity to fulfil his other contracts with other parties?

2)a)i)4m,MDTP10, 2)a)i)4m,Sept2024

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

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.

Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description.

ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that 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.

ALTERNATE ANSWER TO SECOND PART

Section 13 of the Sale of the Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only. In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

According to above stated provision, there is a breach of condition, and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the entire quantity to fulfil his other contracts with other parties and claim damages.

22 - Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of windows. The technician comes at the site and takes size of area where window to be fitted. Afterwards, Iron merchant on discussion with his technician intimates Priyansh that cost of the window will be ` 5,000 and he will take ` 1,000 as advance. Priyansh gives ` 1,000 as advance and rest after fitting of window. After three days when technician try to fit the window made by him at the site of Priyansh, it was noticed that the size of window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use. So, he will not refund the advance money rather Priyansh should give him the balance of ` 4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back? **RTP, June 2023**

Ans - By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods should be in merchantable position at the time of transfer of property. Sometimes, the purpose for which the goods are required may be ascertained from the facts and conduct of the parties to the sale, or from the nature of description of the article purchased. In such a case, the buyer need not tell the seller the purpose for which he buys the goods.

On the basis of above provisions and facts given in the question, it is clear that as window size was not proper, window was not in merchantable condition. Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.

21 - Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

(i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.

(ii) Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.

5)a)6m, Dec2022

Ans - Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.

According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K.

Alternate Answer

(a) (i) According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the instant case, Mr. K has made known to Mr. J the purpose of his purchase and relied on his skill and judgement. It was the duty of Mr. J to supply the marbles fit for that purpose including for second floor. Since the marbles supplied were not fit for second floor Mr. J is liable to replace the marbles to the extent not fit for that purpose.

Duty of Mr. K (the buyer) As per the above doctrine it was the duty of the buyer Mr. K to make known to Mr. J the purpose of his purchase of marbles. He has fully performed his part arranging the visit of Mr. J to the site.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K.

Considering the above provisions Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr. J when he has made him known about that and relied on his skill and judgement.

20 - Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.

With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler?

5)a)6m,MTP1,Dec2022

Ans - Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):

When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points -

(i) Right to examine the goods by the buyer. The buyer should be given chance to examine the good.

(ii) The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]

In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.

19 - Ankit needs a black pen for his exams. He went to a nearby stationery shop and told the seller for a black pen. Seller gives him a pen saying that it is a black pen but it was clearly mentioned on the packet of pen that "Blue Ink Pen". Ankit ignore that and takes the pen. After reaching his house, Ankit finds that the pen is actually a blue pen. Now Ankit wants to return the pen with the words that the seller has violated the implied conditions of sale by description. Whether Ankit can do what he wants as per the Sale of Goods Act, 1930.

RTP, Dec2022

Ans - According to Section 16(2) of the Sale of Goods Act, 1930, 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 correspond with that quality. But where the buyer could find the defect of the goods by ordinary examination, this rule shall not apply. The rule of Caveat Emptor is not applicable.

In the instant case, Ankit orders a black pen to a stationery shop. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is Blue Ink Pen. Ankit ignores the instruction mention on the pack and bought it. On reaching at his house, he finds that actually the pen is blue ink pen. Now he wants to return the pen.

On the basis of above provisions and facts, it is clear that undoubtedly is case of sale by description but Ankit can find the defect using his ordinary diligence as instructions of blue ink pen was clearly mentioned on the pack of pen. Hence, the rule of Caveat Emptor will be applicable here and Ankit cannot return the pen.

18 - C bought a bun from a baker's shop. The piece of bun contained a stone in it which broke C's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?

RTP, Dec2022

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

Hence, C could recover damages in light of the violation of said condition as regards to the consumption of goods i.e. the bun from the baker which is not of merchantable quality.

17 - Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930.

RTP, June2022, ICAI Module

OR

Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930. 5)a)i)5m,MDTP2,6, 2)a)ii)4m,MTP2,Sept2024, 5)a)ii)4m,June2023

Ans - In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930.

OR

As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

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

In this case, M received the goods by sample from L but since the goods were not according to the sample, M can reject the goods and can sue L.

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

16 - TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber. 5)a)3m,Dec2021

Ans - Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:

The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and

judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- (a) The buyer should have made known to the seller the particular purpose for which goods are required.
- (b) The buyer should rely on the skill and judgement of the seller.
- (c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

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

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.

15 - "A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930.

1)c)4m, MTP1, June 2022, 1)c)4m, Dec 2021

Ans - Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the

contract and can claim damages only. In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

14 - Mr. P was running a shop selling good quality washing machines. Mr. Q came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, when the machine was delivered at Mr. Q's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930, discuss whether Mr. P is right in refusing to exchange the washing machine?

2)a)7m,MDTP5, 2)a)7m,MTP1,Sept2024, 5)a)6m,MTP1,June2023, 5)a)6m,MTP1,Dec2021, ICAI Module

Ans - According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine.

Based on the above provision and facts of case, we understand that there is breach of implied condition as to sample as well as description, therefore Mr. Q can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. P to replace the washing machine with desired one.

13 - Prashant reaches a sweet shop and ask for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller. (a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930? (b) Will your answer be different if Prashant does not taste the sweet?

RTP, June 2024, RTP, Dec 2021

Ans - By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prashant can return the sweet and avoid the contract.

(b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prashant can return the sweet and avoid the contract.

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

RTP, June 2021

Ans - According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(1) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

(i) In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

(ii) When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.

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

RTP, June 2021, ICAI Module

Ans - According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

10 - Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ` 125 per kg to which she

agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

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

Explain the basic law on sale by sample under Sale of Goods Act 1930? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930? What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

Sim, 2)a)7m, MDTP4, 7, 5)a)ii)4m, MTP1, Jan2025, RTP, Jan2025, 2)a)7m, MTP3, June2024, Sim, RTP, Dec2023, 5)a)6m, Dec2019, ICAI Module

OR

Mr. Das, a general store owner went to purchase 200 kg of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as ₹ 150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice. The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice. With reference to the provisions of the Sales of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice?

5)a)6m, June2021

Ans - As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

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

(c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

In the instant case, the buyer does not have any option available to him for grievance redressal.

In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

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

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

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

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

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".

(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required to serve his purpose?

RTP, Sept2024, RTP, June2022, 5)a)6m, MTP1, June2021, 5)a)6m, MTP1, June2020, 5)a)6m, June2019, ICAI Module

Ans - (i) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods.

If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

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

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

1)c)4m,MTP2,June2023, 1)c)4m,MTP1,June2021, RTP,June2021, RTP,Dec2020,
1)c)4m,MTP1,June2020, RTP,June2019

Ans - Difference between Condition and Warranty

- (i) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
- (ii) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.

(iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

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

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.

(iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

07 - For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?

RTP, June 2019

Ans - Fitness of Cloth: As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business. In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

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

RTP, Dec 2018

OR

Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930.

6)c)7m,MDTP3, 6)c)7m,MTP2,June2024, 1)c)4m,MTP2,June2022, 1)c)4m,MTP1,Dec2021, 1)c)4m,Dec2020

Ans - The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

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

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

Q5 - Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930? RTP, Dec2018, ICAI Module

Ans - Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated". [Sub-section (3)]

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)]

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

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

Q4 - What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operatives under the said Act.

6)c)7m,MDTP2, RTP,Jan2025, RTP,Dec2023, 4)a)6m,June2022, 4)a)6m,MTP1,June2021, RTP,Dec2019, 4)a)6m,MTP2,June2019, 4)a)6m,MTP1,June2018

OR

Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?

1)c)4m,Dec2023, RTP,June2020, 1)c)4m,June2019

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

These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

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

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

Implied Warrants (Types):

- 1. Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
- 2. Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- 3. Warranty as to quality or fitness by usage of trade [Section 16(3)].** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- 4. Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

03 - Explain the term "Caveat-Emptor" under the Sale of Goods Act, 1930? What are the exceptions to this rule?

4)a)6m,Dec2018, 4)a)6m,MTP1,Dec2018, RTP,June2018

Ans - Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases:

(a) **Fitness for buyer's purpose:** Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. [Section 16(1)].

(b) **Sale under a patent or trade name:** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose [Section 16(1)].

(c) **Merchantable quality:** Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. [Section 16(2)].

(d) **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. [Section 16(3)].

(e) **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Q2 - Explain the "condition as to Merchantability" and "condition as to wholesomeness" under the Sale of Goods Act, 1930.

RTP, June 2018

Ans - Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]:
Where goods are bought by description from a seller who deals in goods of that description

(whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

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

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

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

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

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

Q1 - A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?

ICAI Module

Ans - This is a case related to implied condition as to wholesomeness which provides that the eatables and provisions must be wholesome that is they must be fit for human consumption. In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and can also claim damages from the seller.

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CA Nikesh Agrawal

CA Foundation May 2025

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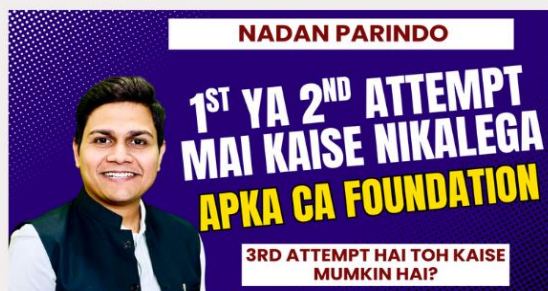
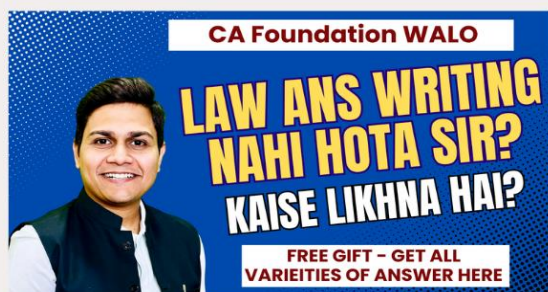
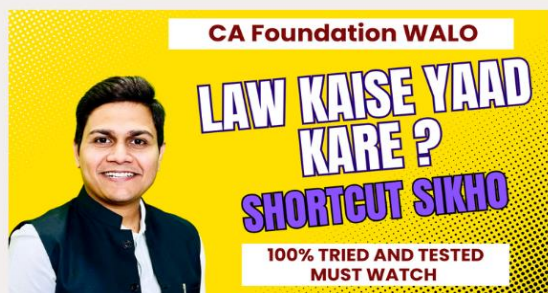
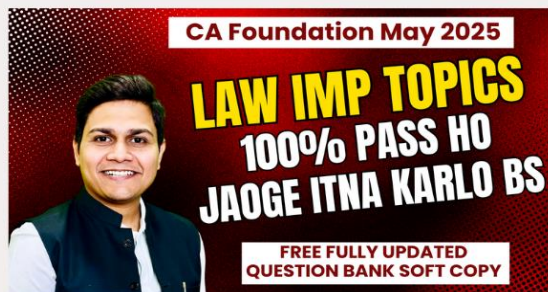
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Chapter: 3 - The Sale of Goods Act, 1930

Unit: 3 - Transfer of Ownership & Delivery of Goods

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

25 - The Institute of Science, Pune (the buyer), placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund.

5)a)i)4m, Jan2025

Ans - Delivery of the goods to the carrier [Section 23(2) of the Sale of Goods Act, 1930]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

In the instant case, the Institute of Science, Pune placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science, Pune (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

24 - A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930.

2)a)ii)3m, Jan2025

Ans - As per Section 27 of the Sale of Goods Act, 1930, "no one can transfer a better title than they themselves have." This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner.

Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.

23 - MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract

specifically identified the microchips by serial numbers and confirmed that they were in a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.

On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss?

What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract?

2)a)i)4m,Jan2025

Ans - According to Section 18 of the Sale of Goods Act, 1930, where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.

According to section 20 of the Sale of Goods Act, 1930, where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

In the instant case, since the microchips were specifically identified and were in a deliverable state when the contract was formed on August 1, 2023, ownership (and risk) likely passed to PQR Enterprises on August 1, 2023.

Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:

If the microchips were not specifically identified and marked for PQR Enterprises at the time of the contract, MNO Limited will suffer the loss, as the risk would not have transferred to PQR Enterprises.

22 - Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930. 6)c)ii)3m,MDTP10, 6)c)ii)3m,Sept2024

Ans - Delivery of wrong quantity [Section 37 of the Sale of Goods Act, 1930]: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole. [Sub-section (3)]

The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Sub section (4)]

21 - 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.

2)a)i)4m,MDTP7,10, Sim,2)a)i)4m,MTP1,Jan2025, 5)a)i)4m,Sept2024

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.

20 - J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.

The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930, 6)c)7m,MDTP8,9, 6)c)7m,MTP2,Jan2025, RTP,Jan2025, 6)c)7m,June2024

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

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

In the given case, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags, the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100.

A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

19 - Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ ` 100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of

tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale. Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930?

5)c)ii)2m, Dec2023

Ans - According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

Important Note: The answer can also be given as per Section 34 of the Sale of Goods Act, 1930, which provides that a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

18 - X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

5)a)i)4m, Dec2023

Ans - As per section 30(2) of the Sale of Goods Act, 1930, 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.

In the instant case, furniture was delivered to Y under an agreement that price was to be paid in three instalments; the furniture to become property of Y on payment of third instalment. Y sold the furniture to Z before the third instalment was paid. Here, Z acquired a good title to the furniture, since he purchased the furniture in good faith.

Hence, X will not succeed in his suit for the recovery of the furniture as Z acquired a good title of the furniture.

17 - A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930? RTP, Dec2022

Ans - Delivery of different description: As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole.

Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

16 - Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021.

The delivery of wheat and the payment was to be made in next three months i.e. by 10th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act, 1930, discuss if such a sale made by Sohan to Vikram is a valid sale?

5)a)6m, MTP1, June2022

Ans - The given question deals with the rule related to transfer of title of goods. Section 27 of the Sale of Goods Act, 1930 specifies the general rule "No man can sell the goods and give a good title unless he is the owner of the goods". The Latin maxim "NEMO DET QUOD NON HABET". However, there are certain exceptions to this rule. One of the exceptions is given in Section 30 (1) of Sale of Goods Act, 1930 wherein the sale by seller in possession of goods even after sale is made, is held to be valid. If the following conditions are satisfied, then it amounts to a valid sale although the seller is no more the owner of goods after sale.

- (i) A seller has possession of goods after sale
- (ii)) with the consent of the other party (i.e. buyer)
- (iii) the seller sells goods (already sold) to a new buyer the new buyer
- (iv) acts in good faith
- (v) The new buyer has no knowledge that the seller has no authority to sell.

In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods and this is with the consent of buyer i.e. Binod. Now Sohan sell those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.

Since all the above conditions given under Section 30 (1) of Sale of Goods Act, 1930 are satisfied, therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.

15 - 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?

RTP, June 2022

Ans - 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 (Section 29 of Sale of Goods Act, 1930)

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.

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.

14 - Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demands the price of Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? If not, who will ultimately bear the loss?

RTP, Sept2024, RTP, June2024, RTP, Dec2022

Ans - According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

- (i) when he signifies his approval or acceptance to the seller,
- (ii) when he does any other act adopting the transaction, and
- (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

According to above provisions and fact, the property is not passes to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Jethalal.

13 - "Risk Prima Facie passes with property." Elaborate in the context of the Sales of Goods Act, 1930.

1)c)4m,MTP1,Dec2023, 1)c)4m,MTP2,Dec2022, 1)c)4m,June2021

Ans - Risk prima facie passes with property (Section 26 of the Sales of Goods Act, 1930)

According to Section 26, 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 the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

12 - State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930.

6)c)i4m,MDTP4, 6)c)i4m,MTP3,June2024, 6)c)7m,MDTP1, 6)c)7m,MTP1,June2024, 1)c)4m,MTP2,Dec2023, RTP,Dec2023, 1)c)4m,Dec2022, 1)c)4m,Dec2019

Ans - Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930): Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer. The essentials are:

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

11 - "A non-owner can convey better title to the bonafide purchaser of goods for value." Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930? 4)a)6m,MTP1,June2020, 4)a)6m,June2019

OR

"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.

4)a)6m,MTP2,June2023, 1)a)4m,MTP1,Dec2022, 1)a)4m,MTP2,Dec2021, RTP,Dec2021,
4)a)6m,MTP1,Dec2020, RTP,June2020, ICAI Module

OR

Explain any six circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per the Sale of Goods Act, 1930.

6)c)7m,MDTP6, 6)c)7m,MTP2,Sept2024, 4)c)6m,MTP1,June2023, 4)c)6m,MTP1,Dec2021,
4)a)6m,Dec2020

Ans - 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]

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

RTP, June 2019

Ans - Rules related to acceptance of delivery: Acceptance is deemed to take place when the buyer-

(a) intimates to the seller that he had accepted the goods; or

(b) does any act to the goods, which is inconsistent with the ownership of the seller; or

(c) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller is ready and willing to deliver the goods

and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods (Sections 43 and 44).

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

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

2)a)7m,MDTP3, 2)a)7m,MTP2,June2024, 5)a)6m,MTP1,Dec2019, 5)a)6m,Dec2018

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

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

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

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

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

5)a)6m,MTP1,Dec2018, RTP,Dec2018, ICAI Module

OR

Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?

(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?

(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

RTP,June2021, 5)a)6m,Dec2020

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-

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

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

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

OR

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

(i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (Two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.

(ii) It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for. Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

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

1)c)4m, Dec2019, 4)a)6m, June2018

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

The essentials regarding appropriation of unascertained goods are:

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

06 - Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?

5)c)6m,MTP2,June2021, RTP,June2020, 5)a)6m,MTP1,June2019, 5)a)6m,MTP2,Dec2018, 5)a)6m,MTP1,June2018, ICAI Module

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

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

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

(b) Where the bales have not been selected with the consent of buyer's representatives. In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

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

RTP,Dec2020, RTP,Dec2019, RTP,June2018, ICAI Module

OR

Ayushman is the owner of a residential property situated at Indraprastha Marg, New Delhi. He wants to sell this property and for this purpose he appoints Ravi, a mercantile agent with a condition that Ravi will not sell the house at a price not less than ` 5 crores. Ravi sells the house for ` 4 crores to Mudit, who buys in good faith. Ravi misappropriated the money received from Mudit. Ayushman files a suit against Mudit to recover his property. Decide with reasons, can Ayushman do so under the Sale of Goods Act, 1930?

RTP, June 2023

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

- (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.

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

OR

On the basis of above, it can be said that Ravi, the mercantile agent, sells property to Mudit who bought in good faith. Mudit obtained a good title of that residential property. Hence, Ayushman cannot recover his property from Mudit. Rather, Ayushman can recover his loss from Ravi.

04 - A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not?

ICAI Module

Ans - According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:-

- (i) One of the several joint owners has the sole possession of them.
- (ii) Possession of the goods is by the permission of the co-owners.
- (iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

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

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

Q3 - X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why? **ICAI Module**

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

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

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

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

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

- (1) The wheat is put in a deliverable state in the sacks.

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

02 - The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930?

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

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

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

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

01 - A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A file a suit against B for the recovery of price. Can he recover the price?

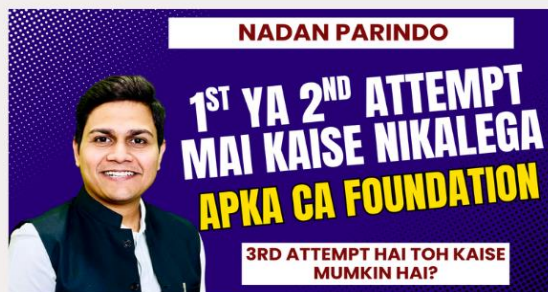
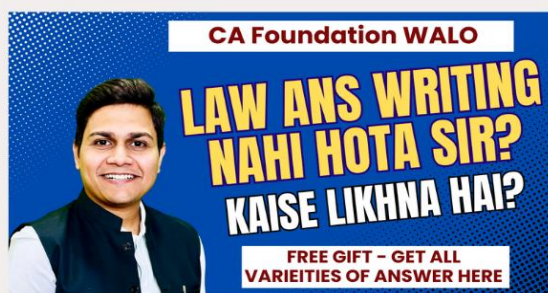
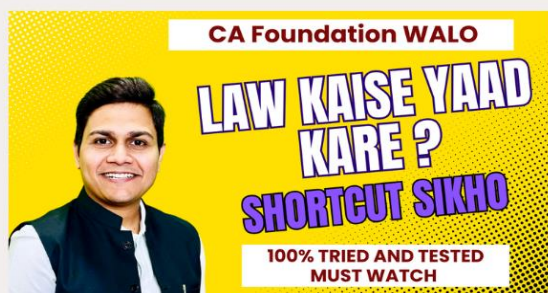
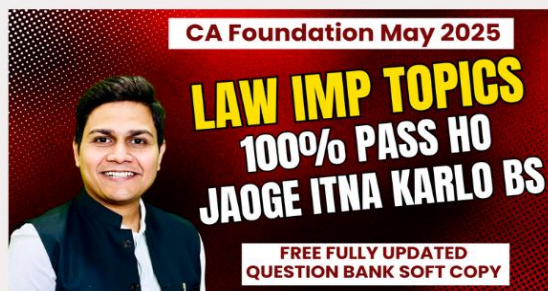
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Ans - A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet. Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period.

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Chapter: 3 - The Sale of Goods Act, 1930

Unit: 4 - Unpaid Seller

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

21 - Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:

(A) Bid by seller with or without notification

(B) Bidder to retract from his bid

(C) Effect of pretending bidding

6)c)i)4m,MDTP10, 6)c)i)4m,Sept2024

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

(A) Bid with notification: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

Bid by seller without notification: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(B) Bidder to retract from his bid: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

(C) Effect of pretending bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

20 - Ansari of Jaipur sold 100 smart TV set @ ` 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ` 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur. Answer the following questions under the provisions of the Sale of Goods Act, 1930:

(A) Whether Ansari has right to stop the goods in transit?

(B) Whether Baburam can claim loss suffered due to nondelivery from Ansari?

2)a)ii)3m,MDTP7,10, 2)a)ii)3m,MTP1,Jan2025, 5)a)ii)3m,Sept2024

Ans - According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non-delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

19 - PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10.am in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:

Mr. Neel	` 5.70 lakh
Mr. Raj	` 4.85 lakh
Mr. Dev	` 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

For another bid of Italian Furniture was made by two parties as follows:

Mr. Dheer	` 15 lakh
Mr. Madhu (on behalf of R N & Associates)	` 15.20 lakh

Sale was completed in favour of Mr. Dheer instead of Mr. Madhu.

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not?

5)a)7m,MDTP9, 5)a)7m,June2024

Ans - An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction.

In terms of the provisions of the above Section, following are some of the requirements, which inter alia are required to be complied with for conduct of a valid auction sale-

(i) Where the goods are sold in lots: Where the goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(iii) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(iv) Reserved price: The sale may be notified to be subject to a reserve or upset price;

In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

18 - Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

(i) State, whether Mr. Shankar was right in his decision?

(ii) What would be your answer if Mr. Ganesh became insolvent within five days of the contract?

RTP, June 2024

Ans - According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) The whole of the price has not been paid or tendered.
- (b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

- (a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)
- (b) where goods have been sold on credit, but the term of credit has expired; or
- (c) where the buyer becomes insolvent.

In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.

- (i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat.
- (ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery.

17 - Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930?

5)c)6m, Dec2023

Ans - Seller's lien (Section 47 of the Sale of Goods Act, 1930): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

As per the provisions of Section 48, where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

The unpaid seller of 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. [Sub-section (2)]

16 - An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete.

5)a)i)2m,MDTP2,6, 2)a)i)3m,MTP2,Sept2024, 5)a)2m,June2023

Ans - According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. In the given question, the auction sale is complete on 7th March, 2023.

15 - Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr. Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan. Mr. Shekharan who is being unpaid seller wants to exercise his right to stoppage in transit.

(a) State with reason, can Mr. Shekharan do so under the Sale of Goods Act, 1930?

(b) Whether your answer would be same if Mr. Ravi have knowledge of Mr. Raghwan's insolvency at the time of buying the goods?

5)a)6m,MTP2,June2023

Ans - According to Section 50 to 52 of the Sale of Goods Act, 1930, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and he may resume possession of the goods as long as they are

in the course of transit and may retain them until payment or tender of the price. However right of stoppage in transit is available only in the following conditions:

- (i) The seller must be an unpaid seller.
- (ii) When the buyer becomes insolvent; and
- (iii) When the goods are in transit.

This right of stoppage in transit is lost if buyer makes sub - sale of such goods during in transit and that buyer purchased in good faith.

(a) On the basis of above provisions and facts, it can be said that even Mr. Shekharan is an unpaid seller, he cannot apply his right of stoppage in transit as goods has been taken by Mr. Ravi in good faith.

(b) Further, if Mr. Ravi has knowledge of Mr. Raghwan's insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Shekharan can exercise his right of stoppage in transit.

14 - A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?

5)a)i)4m,MDTP1, 5)a)i)4m,MTP1,June2023, RTP,June2023, ICAI Module

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

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

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

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime, B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the

goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

13 - What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? 4)a)6m,MTP1,Dec2023, 4)a)6m,Dec2022

Ans - Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

12 - When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?

RTP, Dec2022, 4)a)6m, MTP2, June2022, 4)a)6m, MTP2, Dec2021, ICAI Module

Ans - A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

- (i) the goods have been sold without any stipulation as to credit;
- (ii) the goods have been sold on credit, but the term of credit has expired;
- (iii) the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller loses his right of lien thereon-

- (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) When the buyer or his agent lawfully obtains possession of the goods;

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

11 - Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer fall the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?

5)a)i)4m, MDTP4, 5)a)i)4m, MTP3, June2024, RTP, Dec2021, ICAI Module

Ans - By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.

10 - Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930. 4)a)6m,MTP2,Dec2022, 4)a)6m,MTP1,June2022, 5)a)6m,June2021

Ans - The right against the buyer are as follows:

1. Suit for the price (Section 55 of the Sale of Goods Act, 1930)

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

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

2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

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

6)c)7m,MDTP5, 6)c)7m,Jan2025, 6)c)7m,MTP1,Sept2024, 4)a)6m,MTP2,Dec2023, 4)a)6m,June2023, RTP,June2020

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

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
3. **Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may -
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
5. **Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

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

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

4)a)6m,Dec2019

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

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

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

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

(i) **Right of lien (Section 47):** According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(ii) **Right of stoppage in transit (Section 50):** When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

(iii) **Right to re-sell the goods (Section 54):** The unpaid seller can exercise the right to re-sell the goods under the following conditions:

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

07 - Suraj sold his car to Sohan for ` 75,000. After inspection and satisfaction, Sohan paid ` 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.
RTP, Sept2024, RTP, Dec2020, RTP, Dec2019, ICAI Module

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

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

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

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

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

06 - Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

5)a)i)4m, MDTP3, 8, Sim, 5)a)ii)3m, MDTP1, 5)a)i)4m, MTP2, Jan2025, RTP, Jan2025, 5)a)i)4m MTP2, June2024, Sim, 5)a)ii)3m, MTP1, June2023, RTP, Dec2023, RTP, June2019, ICAI Module

OR

A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent.

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

5)a)6m,MTP1,Dec2020, ICAI Module

Ans - Right of stoppage of goods in transit: The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

OR

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

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

05 - Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit".

4)a)6m,MTP2,June2021, 4)a)6m,MTP1,Dec2019, 4)a)6m,MTP2,Dec2018, RTP,Dec2018

Ans - Right of lien of an unpaid seller

The legal provisions regarding the right of lien of an unpaid seller has been stated from Sections 47 to 49 of the Sale of Goods Act, 1930 which may be enumerated as follows:

(i) According to Section 47, the unpaid seller of the goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases namely:

- (a) where the goods have been sold without any stipulation as to credit.
- (b) where the goods have been sold on credit, but the term of credit has expired; or
- (c) where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

(ii) Section 48 states that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

(iii) According to Section 49 the unpaid seller loses his lien on goods:

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

Right of lien and Right to stoppage the goods in transit; distinction:

- (i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- (ii) Seller should be in possession of goods under lien while in stoppage in transit (i) Seller should have parted with the possession (ii) possession should be with a carrier and (iii) Buyer has not acquired the possession.
- (iii) Right of lien can be exercised even when the buyer is not insolvent, but it is not the case with right of stoppage in transit.
- (iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.

04 - Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction."

RTP, Dec2018

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

- (a) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
- (b) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- (c) **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- (d) **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- (f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

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

5)a)6M,MTP2,June2019, 5)a)6m,June2018, ICAI Module

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

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

- (i) **Suit for price (Section 55)** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

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

4)a)6m, MTP1, June2019, RTP, June2018

Ans - Unpaid Seller : According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) the whole of the price has not been paid or tendered.
- (b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

- (a) The seller must be unpaid.
- (b) The seller must have parted with the possession of goods.
- (c) The goods must be in the course of transit.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

01 - J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery

order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?

ICAI Module

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

- (i) When the buyer has made the transaction with the consent of the seller
- (ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

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

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CA Nikesh Agrawal

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Chapter: 4 - Indian Partnership Act, 1932

Unit - 1- General Nature of Partnership

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

23 - Explain the following terms under the Indian Partnership Act, 1932:

(1) Partner by holding out

(2) Nominal Partner

5)b)4m, Jan2025

Ans - (1) Partner by holding out (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.

(2) Nominal Partner: 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. He is, however liable to third parties for all acts of the firm.

22 - Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal to Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Advise Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm.

3)a)i)3m,MDTP10, 3)a)i)4m,MDTP7, 3)a)i)4m,MTP1,Jan2025, RTP,Jan2025,
3)a)i)3m,Sept2024

Ans - Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co.

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

21 - State whether the following are partnerships under the Indian Partnership Act, 1932:

- i) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.
- ii) Two firms each having 12 partners combine by an agreement into one firm.
- iii) A and B, co-owners, agree to conduct the business in common for profit.
- iv) Some individuals form an association to which each individual contributes ` 5000 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- v) A and B, co-owners share between themselves the rent derived from a piece of land.

RTP, Sept2024, RTP, Dec2023

OR

- i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.

4)b)Dec2021

OR

- a) X, a contractor, appointed Y one of his servants to manage his business of loading and unloading railway wagons. Y was to receive 50% of the profits of the business and also to bear the losses, if any.

- g) 10 major persons form an association to which each member contributes ` 10,000. The purpose is to produce medicines for free distribution to poor patients.

3)a)7m,MDTP2

Ans - i) Yes, this is a case of partnership as there exists the element of doing business and sharing of profits equally.

ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.

iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

iv) No, this is not a case of partnership as no charitable association can be floated in partnership.

v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.

OR

i) No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.

Alternatively, this part can also be answered as below:

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

OR

a) No, this is a case of partnership because no mutual agency relationship exist among X and Y.

g) No, this is not a case of partnership as there is no intention to carry on the business and to share the profits thereof.

20 - What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?

1)c)i)4m,MDTP5, 1)c)i)4m,MTP1,Sept2024, 6)b)4m,MTP2,Dec2023, 6)b)4m,Dec2022

Ans - Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common.

Basis of difference	Partnership	Co-ownership
Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of interest	There is community of interest which means that profits and	Co-ownership does not necessarily involve sharing of

	losses must have to be shared.	profits and losses.
Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

19 - State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership? (3 Marks)

ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper supplied to X? (2 Marks)

iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? (2 Marks)

3)a)7m,MDTP6, 3)a)7m,MTP1,Sept2024, 4)b)6m,Dec2023

Ans - As per Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

i) Yes, it is a case of partnership.

Reason: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

ii) No, it is not a case of partnership

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

(iii) No, it is not a case of partnership

Reason: Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co owners. Because, neither there is existence of business, nor mutual agency is there.

18 - Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ` 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ` 2800 and ` 200 as a penalty to resume the electricity connection. Mr. John claimed ` 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ` 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ` 3000 to Mr. John?

3)a)i)4m,MDTP4, Rtp,June2024, 3)a)i)4m,MTP3,June2024, RTP,June2023

Ans - According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:

- 1 - There must be an agreement between all the persons concerned;
- 2 - The agreement must be to carry on some business;
- 3 - The agreement must be to share the profits of a business and
- 4 - The business was carried on by all or any of them acting for all.

On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ` 1500. Mr. John has to claim the rest of ` 1500 from Mr. Raheem.

17 - Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932.

1)c)6m,MDTP1, 1)c)6m,MTP1,June2024, 3)a)6m,MTP2,June2023, 3)a)6m,MTP2,Dec2022, 3)a)6m,MTP1,June2022, 3)a)6m,Dec2021

Ans - Definition of Partnership: 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to Share Profits
5. Business Carried on by all or any of them acting for all

ELEMENTS OF PARTNERSHIP

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

- 1. Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.
- 2. Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
- 3. Business:** Firstly, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
- 4. Agreement to share profits:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the

profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. Business carried on by all or any of them acting for all: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

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

1)c)i4m,MDTP3,1)c)i4m,MTP2,June2024, 3)b)4m,June2019

Ans - Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

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

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

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

2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate

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

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

15 - What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932? 1)c)i)MDTP2, RTP, Dec2023, 3)a)i)2m, MTP2, Dec2023

Ans - Partnership for a fixed period (Indian Partnership Act, 1932): 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.

14 - "Sharing in the profits is not conclusive evidence in the creation of partnership".

Comment. 6)b)4m, MTP1, Dec2023, 6)b)4m, Dec2021, 6)b)4m, MTP1, Dec2019

Ans - "Sharing in the profits is not conclusive evidence in the creation of partnership"

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

Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4 of the Indian Partnership Act, 1932, in determining the existence or otherwise of partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.

According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear, but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.

Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.

13 - P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932.

4)b)6m, MTP2, Dec2023, 4)b)6m, June2023

Ans - According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any 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 a partner.

As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. S under the provisions of Section 32.

Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.

Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S.

Therefore, S can recover the payment from the Firm, P, Q, R and E.

12 - 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?

RTP, Dec2022

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

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

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

11 - What is Particular Partnership as per Indian Partnership Act, 1932?

3)a)ii)2m, MTP1, Dec2022, RTP, June2020

Ans - 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.

10 - Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants to know the list of information which must be part of

partnership deed drafted by her. Also, give list of information to be included in partnership deed?

6)b)4m,MTP1,Dec2022, 3)a)6m,MTP2,Dec2021, RTP,Dec2020, 6)b)4m,MTP2,June2019, RTP,Dec2018, 6)c)4m,MTP2,Dec2018, 6)b)4m,MTP1,June2018

Ans - Ms. Lucy while drafting partnership deed must take care of following important points:

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

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

- Name of the partnership firm.
- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.
- Provisions for settlement of accounts in the case of dissolution of the firm.
- Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

09 - What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

3)a)i)2m, June2022

Ans - Partnership for a fixed period (Indian Partnership Act, 1932): 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.

08 - Enumerate the differences between Partnership and Joint Stock Company.

3)i)6m, MTP2, June2022, 3)a)6m, MTP1, Dec2021

Ans -

Basis	Partnership	Joint Stock Company
Legal status	A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members (Salomon v. Salomon).
Agency	In a firm, every partner is an agent of the other partners as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.
Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
Extent of liability	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.
Property	The firm's property is that which is	In a company, its property is separate

the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.

Transfer of shares

A share in a partnership cannot be transferred without the consent of all the partners.

from that of its members who can receive it back only in the form of dividends or refund of capital.

In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.

Management

In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.

Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.

Registration

Registration is not compulsory in the case of partnership.

A company cannot come into existence unless it is registered under the Companies Act, 2013.

Winding up

A partnership firm can be dissolved at any time if all the partners agree.

A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

Number of membership

According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.

A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.

Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.
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07 - What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932?

3)a)i)2m, Dec2020, RTP, June2020

Ans - Partnership at will under the Partnership Act, 1932

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

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

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

06 - Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership by holding out.

RTP, Dec2020

Ans - Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

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

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

05 - "Partner indeed virtually embraces the character of both a principal and an agent". Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932. 5)b)7m,MDTP4, RTP,June2020

Ans - "Partner indeed virtually embraces the character of both a principal and an agent": Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

04 - X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Advise Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932.

RTP,Dec2019

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

Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

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

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

03 - Distinguish between Partnership vs. Hindu Undivided Family. Write any two points.

3)a)2m,MTP1,Dec2019

Ans -

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other co-partners are liable only to

		the extent of their share in the profits of the family business.
Calling for accounts on closure	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
Minor's capacity	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
Number of Members	In case of Partnership, number of members should not exceed 50	Members of HUF who carry on a business may be unlimited in number.
Share in the business	In a partnership, each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.

Q2 - What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

6)b)4m, June 2018

Ans - Conclusive evidence of partnership: Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties

constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

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

01 - State the differences between Partnership and Hindu Undivided Family. RTP, June 2018

Ans -

Basis of difference	Partnership	Joint Hindu family
Mode of creation	Partnership is created necessarily by an agreement	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other co -partners are liable only to the

		extent of their share in the profits of the family business.
Calling for accounts on closure	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
Governing Law	A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
Minor's capacity	In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
Number of Members	In case of Partnership number of members should not exceed 50	Members of HUF who carry on a business may be unlimited in number.
Share in the business	In a partnership each partner has a defined share by virtue of an agreement between the partners.	In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.



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Chapter: 4 - Indian Partnership Act, 1932

Unit - 2- Relations of Partners

Question Bank

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

38 - P, Q and R, are partners in a construction firm, PQR Associates. P buys cement on behalf of the firm from D. The cement is used in the ordinary course of the firm's business. P uses the cement for his personal purposes. The supplier D, who is unaware of the private use of cement by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the cement was never received by it. Referring to the provisions of the Indian Partnership Act, 1932, answer the followings:

(i) Whether the Firm's contention is tenable?

(ii) What would be your answer if a part of the cement so purchased by P was delivered to the firm by him, and the rest of the cement was used by him for his private use, about which neither the firm nor the supplier were aware?

3)a)7m, Jan2025

Ans - The given question is based on the Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932. Section 18 deals with the Partner to be an agent of the firm. This means that a partner is the agent of the firm for the purpose of the business of the firm.

The partner indeed virtually holds the character of both a principal and an agent. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

According to section 25, the partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. "Act of firm" connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

As per section 26, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

(a) in the ordinary course of the business of the firm

(b) with the authority of the partners.

According to the facts given in the questions, P, a partner to PQR Associates, buys cement on behalf of the firm from D in the ordinary course of the firm's business. P uses the cement for his personal purposes. D, the supplier was unaware of the private use of cement by P and claims

price from the firm. Firm refuses to pay the price on the ground that the cement was never received by it.

Referring to the stated provisions of the Indian Partnership Act, 1932, following are the answers:

(i) Said Section is applicable only to the act done by partners for the purpose of the business of the firm. In such case, partner act as the agent of the firm for the purpose of the business of the firm. Since in the given case, P, buys cement on behalf of the firm from D in the ordinary course of the firm's business.

Therefore, in the given case, firms' contention of refusal to pay the price on the ground that the cement was never received by it, is not tenable.

(ii) Further for commission of the wrongful act by the partner, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

(a) in the ordinary course of the business of the firm

(b) with the authority of the partners.

In the given case, part of the cement so purchased by P was delivered to the firm by him and the rest of the cement was used by him for his private use, was not known to the firm and the supplier. Since the act of the P to purchase the cement was in the ordinary course of business with the authority of the partner, however wrongful use by the partner will make the firm liable to the same extent as the partner for loss or injury caused to D.

However, PQR Associates can take action against P, the partner.

37 - Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) "If a partner is otherwise expelled; the expulsion is null and void." Discuss.

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse.

1)c)6m,MDTP10, 1)c)6m,MDTP7, 1)c)6m,MTP1,Jan2025, 1(c)6m,Sept2024

Ans - (i) If a partner is otherwise expelled, the expulsion is null and void.

According to Section 33 of the Indian Partnership Act, 1932

(i) the power of expulsion must have existed in a contract between the partners;

(ii) the power has been exercised by a majority of the partners; and

(iii) it has been exercised in good faith.

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

The test of good faith as required under Section 33(1) includes three things:

(i) The expulsion must be in the interest of the partnership.

(ii) The partner to be expelled is served with a notice.

(iii) He is given an opportunity of being heard. Hence, it is correct to say that, if a partner is otherwise expelled, the expulsion is null and void.

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion"

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion, until public notice is given of the expulsion.

However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

36 - On admission as a new partner, Amar agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by the all partners including Amar. Examine, whether Amar will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

3)a)ii)2m,MDTP10, 3)a)ii)3m,MDTP7, 3)b)ii)MTP1,Jan2025, 3)a)ii)2m,Sept2024

Ans - Rights and liabilities of new partner: The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, Amar will not be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

35 - Suman, having 10% share in the property of 200 lakh of a firm retires from the firm on 31 March, 2023. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of 10 lakh during the financial year ending 31st March, 2024. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed 3 lakh from the firm toward the use of her share in the property and profit of the firm which was rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of The Indian Partnership Act, 1932. 3)a)iii)2m,MDTP10, 3)a)iii)2m,Sept2024

Ans - According to section 37 of the Indian Partnership Act, 1932,

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

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. ` 1,20,000 (6% of ` 20 Lakh) or a share of the profits i.e. ` 1 Lakh (10% of ` 10 Lakh) from the firm for the use of her share in the property.

Therefore, claim of Suman of ` 3 Lakh is not valid.

34 - Sahil, Amit and Kunal were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2023, one of the partners, Mr. Kunal died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25th May 2023, when Kunal was also alive.

Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm?

ii) Whether does it make any difference if supplied the furniture to the firm believing that all the three partners are alive?

RTP, Sept2024, RTP, June2022, 4)b)6m, MTP2, June2022, 4)b)6m, MTP1, Dec2021, RTP, June2021

Ans - According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

ii) It will not make any difference even if supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

33 - Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932?

1)c)ii)2m,MDTP5, 1)c)ii)MDTP3, 1)c)ii)2m,MTP1,Sept2024, 1)c)ii)2m,MTP2,June2024,
3)a)ii)2m,June2019

Ans - Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

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

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

32 - M/s ABC & Associates, a partnership firm with A, B and C as senior partners engaged in the business of curtain manufacturing and exporting to foreign countries. On 25th August, 2022, they inducted Mr. P, an expert in the field of curtain manufacturing as their partner. On 10th January 2024, Mr. P was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the remaining partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

3)a)7m,MDTP5, 3)a)7m,MTP1,Sept2024, 4)b)6m,MTP1,June2023, RTP,Dec2020,
4)b)6m,June2019

Ans - Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

The test of good faith as required under Section 33(1) includes three things:

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

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

a) Action by the partners of M/s ABC & Associates, a partnership firm to expel Mr. P from the partnership was justified as he was expelled by approval of the other partners exercised in good

faith to protect the interest of the partnership against the unauthorized activities charged against Mr. P. A proper notice and opportunity of being heard has to be given to Mr. P.

b) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

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

31 - State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:

(A) When he opts to become a partner of the same firm.

(B) When he decides not to become a partner.

5)b)ii)3m,MDTP5, 5)b)ii)MTP1,Sept2024, 3)a)2m,Dec2018

OR

State the liabilities of a minor partner both: (i) Before attaining majority and (ii) After attaining majority.

3)a)ii)MTP1,June2021, 3)b)6m,MTP1,June2020, 3)a)ii)2m,MTP1,June2019

Ans - A) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

B) When he elects not to become a partner:

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

OR

Liabilities of a minor partner before attaining majority:

- a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- b) Minor has no personal liability for the debts of the firm incurred during his minority.
- c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

2) Liabilities of a minor partner after attaining majority:

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

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

30 - Whether a minor may be admitted in the business of a partnership firm? Also, explain the rights of a minor in the partnership firm under the Indian Partnership Act, 1932.

1)c)6m,MDTP6, 1)c)6m,MTP1,Sept2024, 3)a)ii)4m,MTP2,Dec2023, 3)a)6m,MTP1,June2023, RTP,Dec2021, 3)a)i)3m,MTP1,June2021, 3)b)6m,MTP2,June2021, 3)a)i)3m,MTP1,June2019, 3)a)6m,MTP2,Dec2018, RTP,June2018

Ans - A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights of such a partner will be governed under Section 30 as follows:

Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii)) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

29 - A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C.

3)a)ii)3m,MDTP9, 3)a)ii)3m,MDTP8, 3)b)ii)3m,MTP2,Jan2025, 3)a)ii)3m,June2024

Ans - According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.

As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:

- (a) in the ordinary course of the business of the firm, or
- (b) with the authority of the partners.

Section 27 provides that the firm is liable if a partner, acting within the scope of his apparent authority, receives money or property from a third party and misapplies it, or if the firm in the course of its business receives money or property and the same is misapplied while it is in the custody of the firm.

In the instant case, both A and B are liable to C for the wrongful acts committed by B. A cannot avoid liability merely on the grounds of being a sleeping partner.

28 - 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 continued 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?

Rtp,June2024, RTP,June2022

Ans - By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

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.

27 - A, B & 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 INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 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 INR 350? Assume there is no contract between the partners regarding the above.

Rtp, June2024, RTP, Dec2021

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

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given scenario, B had sold iron bar to the firm at the current prevailing market rate of 350 per Kg though he had stock with him which he bought for INR 200 per Kg. Hence, he made an extra profit of INR 150/Kg. This arises purely out of transactions with the firm. Hence, B is accountable to the firm for the extra profit earned thereby.

26 - State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

1)c)6m,MDTP8,1)c)6m,MTP2,Jan2025, RTP,June2024, RTP,June2023,
3)a)6m,MTP2,June2019, RTP,Dec2018, 3)a)6m,MTP1,June2018

Ans - Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

During the continuance of partnership, such transferee is not entitled

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

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

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.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

25 - A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B.

Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932?

3)a)7m,MDTP1, 3)a)7m,MTP1,June2024, 4)b)6m,MTP1,June2024

Ans - According to Section 13(e) of Indian Partnership Act, 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

In the instant case, M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss.

On the basis of above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

24 - i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

1)c)2m,MDTP4, 5)b)i)4m,MDTP1, 5)b)4m,MTP1,June2024, 1)c)i)2m,MTP3,June2024, RTP,Dec2023

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

5)b)ii)3m,MDTP1, 5)b)3m,MTP1,June2024, RTP,Dec2023, 3)a)4m,Dec2019

Ans - i) Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932): According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

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

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

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

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2023, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

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

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

3)a)7m,MDTP3, 3)a)7m,MTP2,June2024, 4)b)6m,Dec2020

Ans - Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)

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

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

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

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

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

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

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

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

1)c)ii)4m,MDTP4, RTP,Jan2025, 1)c)ii)4m,MTP3,June2024, RTP,Dec2023

Ans - Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

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

21 - Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

3)a)ii)3m,MDTP1, 3)a)ii)3m,MTP3,June2024, RTP,June2021, 6)b)4m,Dec2020

Ans - Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932):

The two clauses of Section 27 bring out an important point of distinction between the two categories of cases of misapplication of money by partners.

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

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

The firm would be liable in both cases.

20 - "Partner indeed virtually embraces the character of both a principal and an agent".

Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932.

5)b)7m,MTP3,June2024

Ans - "Partner indeed virtually embraces the character of both a principal and an agent":

Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

19 - Discuss the rule regarding a partner's implied authority to bind the firm for his acts. Also, explain the situations when the partner has no implied authority to bind the firm.

3)a)6m,Dec2023

OR

Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932?

3)a)6m,June2021, RTP,June2019, 3)a)6m,MTP1,Dec2018

Ans - As per the provisions of Sections 19(1) read with the provisions of Section 22 of the Indian Partnership Act, 1932, which deal with the implied authority of a partner, provide that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority.

As per the provisions of Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

As per the provisions of Section 21 of the Indian Partnership Act, 1932, a partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

As per the provisions of sub-section (2) of Section 19 the Indian Partnership Act, 1932, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) Submit a dispute relating to the business of the firm to arbitration;
- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm;
- (d) withdraw a suit or proceedings filed on behalf of the firm;
- (e) admit any liability in a suit or proceedings against the firm;

- (f) acquire immovable property on behalf of the firm;
- (g) transfer immovable property belonging to the firm; and
- (h) enter into partnership on behalf of the firm.

Mode Of Doing Act To Bind Firm (Section 22): In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

18 - M/s ABC Associates has been a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Vikas, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Vikas joining them as partner in M/s ABC Associates. After some time, Mr. Vikas felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Vikas be introduced as a partner if his father wants to retire? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

RTP, Dec2023, RTP, Dec2021

Ans - (i) Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):

Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. In the instant case, Mr. Vikas can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

(ii) Rights of Transferee of a Partner's interest (Section 29): A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Vikas, the transferee in M/S ABC Associates, cannot inspect the books of the firm and the contention of the other partners is right that Mr. Vikas cannot challenge the books of accounts.

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

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

(i) To what extent X will be liable if he failed to give public notice after attaining majority?

(ii) Can Mr. L recover his debt from X? RTP, Dec2023, RTP, Dec2020, 4)b)6m, Dec2019

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

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

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

(A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

(ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

16 - What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932? 6)b)4m, June2023

Ans - Conduct of the Business (Section 12 of the Indian Partnership Act, 1932): Subject to contract between the partners-

- a) every partner has a right to take part in the conduct of the business;
- b) every partner is bound to attend diligently to his duties in the conduct of the business;
- c) any difference arising as to ordinary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all partners; and
- d) every partner has a right to have access to and to inspect and copy any of the books of the firm.
- e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

15 - Shyam, Mohan and Keshav were partners in M/s Nandlal Gokulwale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932.

RTP, June 2023

Ans - According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Further, according to Section 21, a partner has authority, in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss. Hence, this sale will bind the firm.

14 - Mr. Naresh is one of the four partners in M/s XY Enterprises. He owes a sum of ` 6 crore to his friend Mr. Akash which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Akash for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

- i) Can Mr. Naresh validly transfer his interest in the firm by way of sale?**
 - ii) What would be the rights of the transferee (Mr. Akash) in case Mr. Naresh wants to retire from the firm after a period of 6 months from the date of transfer?**
- 4)b)6m,MTP2,June2023, 4)b)6m,MTP2,Dec2022, 4)b)6m,MTP1,June2022, 4)b)6m,June2021**

Ans - According to Section 29 of the Indian Partnership Act, 1932,

1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law:

- i) Yes, Mr. Naresh can validly transfer his interest in the firm by way of sale.**
- ii) On the retirement of the transferring partner (Mr. Naresh), the transferee (Mr. Akash) 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.

So, in this case on Mr. Naresh's retirement, Mr. Akash would be entitled to receive the value of Mr. Naresh's share to the extent of ` 6 crore in the firm's assets.

13 - Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932?

5)b)7m,MDTP2, 3)a)6m,Dec2022

OR

Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932.

3)a)ii)2m,Dec2020

Ans - Expulsion of partner and factors to be kept in mind:

As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

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

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

The test of good faith as required under Section 33(1) includes three things:

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

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

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

RTP,Dec2022

OR

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

(i) Whether Ram's private estate is liable for the price of the machine purchased by the firm?

(ii) Against whom can the creditor obtain a decree for the recovery of the price?

RTP, June 2019

Ans - Liability of Partner in case of death

According to Section 35 of Indian Partnership Act, 1932, the estate of a deceased partner is not liable for any act of the firm done after his death. The estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the instant case, M/s ABC & Company was having three partners A, B and C. The firm was going to purchase a machine from M/s LMN & Company. Before A & B purchase the machine, C died. Machine was purchased but after that A and B become insolvent and the firm was unable to pay for machine.

On the basis of above provisions and facts of the problem given, the machine was purchased after the death of C. Hence, the estate of C would not be liable for the dues of M/s LMN & Company.

OR

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

(i) Ram's estate in this case will not be liable for the price of the Machinery purchased.

(ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them.

A suit for goods sold and delivered would not lie against the representative of the deceased partner.

11 - Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? 3)a)i)4m,MTP1,Dec2022, RTP,June2021

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

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

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

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

10 - Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. 1)c)ii)4m,MDTP2, 3)a)ii)4m,June2022

OR

A minor admitted to the benefits of a partnership firm is entitled to certain rights and may also have liabilities to third parties for the acts of the firm. Discuss the rights and liabilities (before attaining majority only) of the minor under the Indian Partnership Act, 1932. 1)c)6m,Jan2025

Ans - Minor as a partner:

A minor is not competent to contract. Hence, a person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights of a minor in a partnership firm:

- i) A minor partner has a right to his agreed share of the profits and of the firm.
- ii) He can have access to, inspect and copy the accounts of the firm.
- iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

OR

Ans - Rights are same, for liabilities before majority, refer Ans 32.

Q9 - M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.

4)b)6m, June 2022

Ans - Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):

Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

ii) Rights of Transferee of a Partner's interest (Section 29):

A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to

inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.

08 - X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A.

Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

4)b)6m,MTP2,Dec2021

OR

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

4)b)6m,MTP1,June2021, 4)b)6m,MTP2,June2019, 4)b)6m,June2018

Ans - According to Section 33 of Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

i) the power of expulsion must have existed in a contract between the partners;

- ii) the power has been exercised by a majority of the partners; and
- iii) it has been exercised in good faith.

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

The test of good faith as required under Section 33(1) includes three things:

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

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

According to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid as he was not served any notice and also he was not given an opportunity of being heard. Also the matter of fight between A and Y was on personal reasons, hence not satisfying the test of good faith in the interest of partnership. Since the conditions given under above provisions are not satisfied, the expulsion stands null and void.

OR

If a partner is otherwise expelled, the expulsion is null and void. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

07 - A, B, and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.

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

**4)b)6m,MTP2,June2021, 4)b)6m,MTP1,June2020, 4)b)6m,MTP1,June2019,
4)b)6m,MTP1,Dec2018**

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

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

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

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

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

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

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

i) Retirement of a partner

ii) Insolvency of a partner

RTP, Dec2019

Ans - (i) RETIREMENT OF A PARTNER (SECTION 32):

(1) A partner may retire:

- (a) with the consent of all the other partners;
- (b) in accordance with an express agreement by the partners; or
- (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

(ii) Insolvency of a partner (Section 34)

(1) The insolvent partner cannot be continued as a partner.

(2) He will be ceased to be a partner from the very date on which the order of adjudication is made.

(3) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

(4) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,

(5) Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

05 - Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs. 50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.

3)b)6m,MTP1,Dec2019

Ans - Implied authority of a partner

Yes, as per sections 19 and 22 of the Indian Partnership Act, 1932 unless otherwise provided in the partnership deed, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business and is done in a usual manner. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

04 - What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?

3)a)i)2m, June 2019

Ans - Effect of notice to an acting partner of the firm (6 Marks)

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

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

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

3)b)ii)3m, Dec 2018

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.

Q2 - Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. RTP, Dec2018

Ans - It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

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

The test of good faith includes:

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

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

Q1 - A, B and C are partners in a firm called ABC Firm. A, with the intention of deceiving D, a supplier of office stationery, buys certain stationery on behalf of the ABC Firm. The stationery is of use in the ordinary course of the firm's business. A does not give the stationery to the firm, instead brings it to his own use. The supplier D, who is unaware of the private use of stationery by A, claims the price from the firm. The firm refuses to pay for the price, on the ground that the stationery was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

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

4)b)6m,MTP2,Dec2018, 4)b)6m,MTP1,June2018

Ans - The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932. The section provides that subject to the

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

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

- (i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- (ii) In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.

In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.



CA Nikesh Agrawal

CA Foundation May 2025

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Chapter: 4 - Indian Partnership Act, 1932

Unit - 3- Registration & Dissolution of a Firm

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

18 - "Dissolution of a partnership firm may occur by mutual agreement with the consent of the majority of partners, while compulsory dissolution requires an order from the court." Discuss this statement with reference to the relevant provisions of the Indian Partnership Act, 1932.

5)b)ii)3m, Jan2025

Ans - Dissolution by Agreement (Section 40 of the Indian Partnership Act, 1932):

Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Hence, the statement 'dissolution of a firm by the consent of the majority of the partners is not correct unless otherwise provided in a contract between them.'

(iii) Compulsory dissolution (Section 41):

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

Hence, the statement 'compulsory dissolution requires an order from the court' is not correct.

17 - State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932.

5)b)7m,MDTP10, 5)b)7m,MDTP8, 5)b)7m,MDTP3, 5)b)7m,MTP2,Jan2025, 5)b)7m,Sept2024, 5)b)7m,MTP2,June2024, 6)b)4m,June2022, RTP,June2020, 6)b)4m,Dec2018, RTP,Dec2018

Ans - DISSOLUTION BY THE COURT (SECTION 44): Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) **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. Temporary sickness is no ground for dissolution of firm.
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

(e) 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.

(f) 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.

(g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

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

16 - When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. 5)b)7m,MDTP6, RTP,Sept2024, 5)c)MTP2,Sept2024, 6)b)4m,MTP1,June2023, 6)b)4m,MTP2,June2022, 6)b)4m,MTP1,Dec2021, 6)b)4m,MTP2,June2021, RTP,Dec2020, RTP,Dec2019, 6)b)4m,MTP1,June2019

Ans - Dissolution of Firm: The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The

particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved.

The partnership terminates as between each and every partner of the firm.

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

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

15 - Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. 5)b)i)4m,MDTP5, 5)b)i)MTP1,Sept2024, 6)b)4m,Dec2023, 6)b)4m,MTP2,June2023, 6)b)4m,MTP2,Dec2022, 6)b)4m,MTP1,June2022, 6)b)4m,June2021, 6)b)4m,MTP1,Dec2018

Ans - Mode of Settlement of partnership accounts: As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;

- (b) in paying to each partner rateably what is due to him from capital;
- (c) in paying to each partner rateably what is due to him on account of capital; and
- (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

14 - The Indian Partnership Act does not make the registration of firms compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Still, there are some cases where non-registration of firm does not affect certain rights. Explain with reference to the provisions of the Indian Partnership Act, 1932. 1)c)6m,MDTP9, 5)b)7m,MDTP7, 1)c)6m,June2024, 6)c)4m,MTP1,June2020

Ans - The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

Exceptions: Non-registration of a firm does not, however affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ` 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

13 - P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business?

3)a)i)4m,MDTP9, 3)a)i)4m,MDTP8, 3)a)i)4m,MTP2,Jan2025, RTP,Jan2025,
3)a)i)4m,June2024

Ans - Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

12 - "Dissolution of partnership doesn't mean dissolution of firm". Do you agree with this statement? State any three situations where court can dissolve the partnership firm.

5)b)7m,MDTP9, 5)b)7m,June2024, 6)b)4m,Dec2019, 3)a)2m,June2018

Ans - Dissolution of partnership doesn't mean dissolution of firm. According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Thus, the dissolution of firm means the discontinuation of the legal relation, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, the relationship between such a partner and other is dissolved, but the rest may decide to continue.

In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of

partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Important note: Different mode of presentation to an answer

Dissolution of partnership doesn't mean dissolution of firm. This statement can be proved with the help of some points of distinction between both of them, which are as follows:

Dissolution of Firm Vs. Dissolution of Partnership

Basis of Difference	Dissolution of Firm	Dissolution of Partnership
Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of firm.
Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
Final closure of the books	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

Dissolution By the Court (Section 44 of the Indian Partnership Act, 1932):

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

(a) 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. Temporary sickness is no ground for dissolution of firm.

(b) Permanent incapacity: When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(c) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of

the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

(e) 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 due by the partner, the court may dissolve the firm at the instance of any other partner.

(f) 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.

(g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

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

11 - X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932? Rtp, June 2024, RTP, June 2023

Ans - By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z.

10 - "Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non registration of the partnership firms in India. Also, explain the rights unaffected due to non registration of firms.

5)b)7m,MTP1,Jan2025, 3)a)6m,MTP1,Dec2023, 4)b)6m,Dec2022, 6)b)4m,MTP2,Dec2021, RTP,June2021, 6)b)4m,MTP1,June2021, 3)b)4m,Dec2020, 3)b)4m,MTP1,Dec2019, 6)b)4m,June2019, 3)b)4m,June2018

Ans - The Indian Partnership Act, 1932 does not make the registration of firm's compulsory nor does it impose any penalty for non-registration. However, under Section 69 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. These disabilities briefly are as follows:

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

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But such a

person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

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

Following are the Rights unaffected due to non-registration of firms: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ` 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

09 - Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932. **3)a)6m, June2023, RTP, June2019**

Ans - Application for Registration (Section 58 of the Indian Partnership Act, 1932): The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- a) The firm's name
- b) The place or principal place of business of the firm,
- c) The names of any other places where the firm carries on business,
- d) the date when each partner joined the firm,
- e) the names in full and permanent addresses of the partners, and
- f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

- 1) Each person signing the statement shall also verify it in the manner prescribed.

2) A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.

Registration (Section 59): When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms and shall file the statement.

The Firm when registered shall use the brackets and word (Registered) immediately after its name.

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

RTP, Dec2022

Ans - Compulsory dissolution of a firm (Section 41)

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

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical.

The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of Section 41 of the Indian Partnership Act, 1932.

07 - P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019, A dies. Now only B and P continue the firm and same business with same firm name P & Co.

In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co.

The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.

In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable?

4)b)6m,MTP1,Dec2022

Ans - Consequences of Non-registration of partnership firm (Section 69 of the Indian Partnership Act, 1932):

Non-registration of partnership gives rise to a number of disabilities. Though registration of firm is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:

- a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.
- b) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.
- c) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- d) Third-party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

In the instant case, since the fresh registration has not been taken after introduction of new partner S, the firm P & Co. will be considered as unregistered firm. Hence the firm which is not registered cannot file a case against the third party. Hence the firm P & Co. cannot sue X.

06 - M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

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

RTP, June2022

Ans - According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

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

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

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

Q5 - MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected?

RTP, Dec2021

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

a) by the adjudication of all the partners or of all the partners but one as insolvent, or

b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

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

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

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

04 - 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? RTP, June 2020. RTP, June 2018

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.

03 - P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable? RTP, June 2019

Ans - As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

(i) The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

(ii) the suit must be instituted by or on behalf of the firm which had been registered.

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

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X.

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

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

01 - A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?

RTP, June 2018

Ans - As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the

Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (a) the suit must be instituted by or on behalf of the firm which had been registered;
- (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms.

Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.



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Chapter: 5 - Limited Liability Partnership Act, 2008
Question Bank (Updated till Jan 2025 Attempt)

09 - Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of the Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them.

2)c)6m, Jan2025

Ans - Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008):
The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

(c) Statement to be filed:

- there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the LLP;

(c) state the proposed business of the LLP;

(d) state the address of the registered office of the LLP;

(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

(g) contain such other information concerning the proposed LLP as may be prescribed.

(3) If a person makes a statement as discussed above which he—

(a) knows to be false; or

(b) does not believe to be true, shall be punishable

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

Incorporation by registration (Section 12- Sufficient evidence): As per section 12, the Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of the sub-section has been complied with.

In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

08 - Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. (4m)

(ii) What do you mean by a Small Limited Liability Partnership? (2m)

2)c)6m,MDTP7,10, 2)c)6m,MTP1,Jan2025, 2)c)6m,Sept2024

Ans - (i) Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008):

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

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

(3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]:

It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

07 - State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008?

RTP, Sept 2024

Ans - Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

- i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- iv) If the LLP contravenes any provisions of this section, the LLP 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 LLP and its every partner.

Q6 - What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

2)c)6m,MDTP5, 2)c)6m,MTP1,Sept2024

Ans - Designated Partner [Section 2(1)(j) of the LLP Act, 2008]: "Designated partner" means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

- i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

Q5 - "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

2)c)6m,MDTP1,6, 2)c)6m,MTP2,Sept2024, 2)c)6m,MTP1,June2024

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

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

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

Q4 - A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.

- i) Body Corporate
- ii) Mutual Agency
- iii) Foreign LLPs
- iv) Artificial legal person

2)c)6m,MDTP8,9, 2)c)6m,MTP2,Jan2025, RTP,Jan2025, 2)c)6m,June2024

Ans - Body corporate: Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

Q3 - A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities. RTP, June 2024

Ans - Comparison between a Limited Liability Partnership (LLP) and partnership can be analysed on the below tabulated parameters.

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

Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
Annual filing of documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
Foreign partnership	Foreign nationals can become a partner in a LLP	Foreign nationals cannot become a partner in partnership firm.
Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can admitted to benefits of the partnership with the prior consent of the existing partners.

02 - List the differences between the Limited Liability Partnership (LLP) and the Limited Liability Company.

2)c)6m,MTP2,June2024

OR

"A LLP (Limited Liability Partnership) is a type of partnership which provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement." In line with the above

statement clearly elaborate the difference between LLP and Limited Liability Company (LLC).

2)c)6m,MDTP2,3

Ans - Distinction between LLP and Limited Liability Company: The points of distinction between a LLP and Limited Liability Company are tabulated as follows:

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum - 2 members Maximum 200 members Public company: Minimum - 7 members Maximum - No such limit on the members. Members can be organizations, trusts, another business form or individuals.
Liability of members/partners	Liability of the partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company is managed by the partners including the designated partners authorized in the	The affairs of the company are managed by board of directors elected by the shareholders.

	agreement.	
Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. - 2 directors Public co. - 3 directors

01 - 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)

2)c)6m,MDTP4, 2)c)6m,MTP3,June2024

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.

Note: Before June 2024 Attempt questions are not included as syllabus is highly changed from June 2024.

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Chapter: 6 - The Companies Act, 2013

Question Bank

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

56 - The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:

Central Government	26%
State of Maharashtra	18%
State of Tamilnadu	24% and
Public	32%

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013. 3)b)i)5m,Jan2025

Ans - Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013: No institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013.

By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(ii) the Infrastructure Development Finance Company Limited,

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

55 - Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. 2)b)7m, Jan2025

Ans - The Articles of Association are in fact the Bye-Laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

(1) Contains regulations: The articles of a company shall contain the regulations for management of the company.

(2) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(3) Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(6) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to

such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

54 - Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company?

1)b)ii)3m, Jan2025

Ans - Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles.

Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

53 - "Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to

the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient.

1)b)i)4m, Jan2025

Ans - Formation of companies with charitable objects etc. (Section 8 company):

- Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
 - promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
 - Such company intends to apply its profit in
 - promoting its objects and
 - prohibiting the payment of any dividend to its members.
- The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to
 - Converts its status and change its name
 - Wind-up
 - Amalgamate with another company having similar object.
- A partnership firm can be a member of Section 8 company.

In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation).

The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm.

Hence, the ground for winding up taken on the basis of transfer of any part of profit by Harmony Foundation to the M/S LMP Associates is correct and sufficient.

However, M/S LMP Associates can become a member of Section 8 company. Therefore, this ground is not correct hence not sufficient.

52 - XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery

with a down payment of 1 crore. Referring to the provisions of The Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company?

1)b)i)4m,MDTP8,10, 1(b)ii)3m,Sept2024, 1)b)i)4m,MTP2,Jan2025

Ans - According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

51 - What is the effect of Memorandum & Articles when registered?

2)b)ii)2m,MDTP10, 2(b)(ii)2m,Sept2024

Ans - Effect of Memorandum and Articles: As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

50 - After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.

Would your answer be different, if the company had a company secretary?

3)b)ii)3m,MDTP7,10, 3(b)(ii)3m,Sept2024, 3)b)ii)4m,MTP1,Jan2025

Ans - The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary. Hence, yes, the answer will be different.

49 - JV Limited borrowed a secured loan of 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to 1 crore. The bank released the loan amount in two instalments of 1 crore and 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of 3 crore for repayment of its lawful debts. The utilisation of the remaining 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan.

3)b)i)4m,MDTP7,10, 3(b)i)4m,Sept2024, 3)b)i)4m,MTP1,Jan2025

Ans - Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, borrowing more than ₹1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore.

Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ` 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.

Ultimately, the company has no remedy available to recover the balance amount of loan of ` 1 crore as the spending thereof is not traceable.

48 - Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short-listed friends as a nominee with effect from 1st January, 2024.

- i) Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.**
- ii) Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.**

Referring to the provisions of the Companies Act, 2013, advise Kamal regarding eligibility of his short-listed friends to be appointed nominee and the procedure to be followed for changing the name of the nominee as per the provisions of The Companies Act, 2013.

1)b)i)4m,MDTP10, 1(b)i)4m,Sept2024

Ans - As per Rule 3 of the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Here, "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar can be appointed as a nominee in the OPC by Kamal as he is an Indian Citizen and non-resident in India.

Alternative Answer as follows:

As per Rule 3 of the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar cannot be appointed as a nominee in the OPC by Kamal as he has not stayed in the preceding F/Y 2022-23 for a single day.

Procedure for changing the nominee: The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar.

Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

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

5(b)6m, Dec2019, 5(ii)6m, MTP2, June2022, 5(ii)6m, MTP1, Dec2021

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

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.

- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

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

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

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

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

01, ICAI Module, 5)b)6m, MTP2, June 2019, 5)b)6m, MTP1, June 2018

OR

What is the main difference between a Guarantee Company and a Company having Share Capital? **6(c)3m, June 2021**

Ans - Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

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

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

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

OR

Difference between Guarantee Company [Section 2(21) of the Companies Act, 2013] and a Company having share capital [Section 2(22)].

In case of guarantee company, the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; whereas in the case of company having share capital, members may be called upon to discharge their liability at any time, either during the company's life-time or during its winding up.

It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

In *Narendra Kumar Agarwal vs. Saroj Maloo*, the Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company

is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

45 - Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ` 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ` 1,50,000/-. Mr. R informed the company that he had already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act, 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

3)b)7m,MDTP4, 3(b)7m,MTP3,June2024, 1(b)4m,Dec2022, 6(c)3m,MTP2,Dec2023

Ans - i) Fate of the suit and the liability of Mr. R towards the company:

Doctrine of the Indoor Management

According to the Doctrine of Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-the Royal British Bank vs. Turquand. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ` 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management in no way rewards those who behave negligently. It is the duty of the outsider to make the necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

44 - Articles of Association of XYZ Private Limited provides that Board of Directors (BOD) can take the loan upto ` 5,00,000 for Company by passing the board resolution. In that case, the loan amount is in excess of the limit, special resolution is required to be passed in general meeting. Due to urgent needs of funds, BOD applied for loan in a reputed bank for ` 10,00,000 without passing the resolution in the general meeting. BOD gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lend the money. On demanding the repayment of loan, company denied the payment as act was ultra vires to company. Kindly, advise.

RTP, June 2023, Sim, 1(ii) MTP1, Dec 2022

Ans - According to doctrine of Indoor Management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not enquire into the regularity of internal proceedings as required by Memorandum and Articles. This was also decided in case of Royal British Bank Vs. Turquand.

In the instant case, XYZ Private Limited have taken loan from reputed bank for ` 10,00,000 by passing Board Resolution while Special Resolution was necessary for such amount. BOD gave an undertaking to bank that Special Resolution has been passed for such loan. The bank on believing on such undertaking lends the money. On demanding the repayment of loan, company denied the payment as act was ultra vires to company.

On the basis of provisions of doctrine of indoor management, the bank can claim the amount of his loan from the company. The bank can believe on the undertaking given by board and no need to enquire further.

43 - The Articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need

of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013. **RTP, June 2018**

Ans - According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Since, the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

42 - A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013. **RTP, Dec 2022**

Ans - If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company.

The facts of the case are similar to the case of Merchandise Transport Limited vs. British Transport Commission (1982), wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were held to be one commercial unit and the application for licences was rejected.

Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

41 - The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed ` 18

Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan. Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013?

1(b)4m, June 2022

OR

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

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

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

1(b)4m, June 2019, 06, ICAI Module, 5)ii)6m, MTP1, Dec 2020

Ans - Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect the external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.

2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Quick Finance Limited being external to the company, need not enquire whether the necessary resolution was passed properly. Even if Aarna Limited claims that no resolution authorizing the loan was passed, Aarna Limited is bound to repay the loan to Quick Finance Limited.

OR

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

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

1)b)i)4m,MDTP6, 1(b)i)4m,MTP2,Sept 2024, 1(ii)4m,MTP1,June2023, Sim,6(c)3m,Dec2018, 1)b)4m,MTP2,June2021, 6)c)3m,MTP1,Dec2019, 1)b)4m,MTP1,June2019

Ans - Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive Notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the Articles or Memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons.

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

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.

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

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

08, ICAI Module, 6(iii)3m, MTP1, Dec2020, RTP, June2020, RTP, Dec2018

OR

When a company is registered, it is clothed with a legal personality. Explain. Rtp, June2018

Ans - a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

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

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

with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

OR

When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

- a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.
- b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.

A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

38 - Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company?

2)b)7m,MDTP7,9, 2(b)7m,June2024, 2)b)7m,MTP1,Jan2025

OR

Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company?

2)b)7m,MDTP3,8, 2(b)7m,MTP2,June2024, 5(b)6m,June2018, 5)b)6m,MTP1,Dec2019, RTP,Dec2019, 2)b)7m,MTP2,Jan2025

Ans - Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) - salient features

- Only one person as member.
- Minimum paid up capital - no limit prescribed.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.
 - ☐ shall be eligible to incorporate an OPC;
 - ☐ shall be a nominee for the sole member of an OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.
- If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Here the member can be the sole member-cum-director.

Further, OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

37 - Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ` 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013?

5(b)(i)4m, Dec2022, 1(b)4m, Dec2019, RTP, June2021, RTP, Dec2020

Ans - Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

36 - 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.

6(c)3m, June2022, 1(b)4m, MTP2, Dec2022

OR

Mr. A is an Indian citizen and his stay in India during immediately preceding financial year is for 115 days. He appoints Mr. B as his nominee who is a foreign citizen but has stayed in India for 130 days during immediately preceding financial year.

- i) Is Mr. A eligible to be incorporated as a One Person Company (OPC). If yes, can he give the name of Mr. B in the memorandum of Association as his nominee to become the member after Mr. A's incapacity to become a member.
- ii) If Mr. A has contravened any of the provisions of the Act, what are the consequences?

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.

OR

i) In the given case, though Mr. A is an Indian citizen, his stay in India during the immediately preceding previous year is only 115 days which is below the requirement of 120 days. Hence Mr. A is not eligible to incorporate an OPC.

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

ii) Since Mr. A is not eligible to incorporate a One Person Company (OPC), he will be contravening the provisions, if he incorporates one. He shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to One thousand rupees every day after the first during which such contravention occurs.

35 - Y incorporated a "One Person Company (OPC)" making his sister Z as nominee. Z is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing

her consent of nomination in the said OPC. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below:

- (i) Is it mandatory for Z to withdraw her nomination in the said OPC, if she is leaving India permanently?
- (ii) Can Z continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage?

1(b)4m, June 2021, 07, ICAI Module, RTP, June 2020

OR

Rohan incorporated a "One Person Company". The memorandum of OPC indicates the name of his brother Vinod as the nominee of OPC. However, Vinod is starting his new business in abroad and needs to leave India permanently. Due to this fact, Vinod is withdrawing his consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below:-

I. If is it mandatory for Vinod to withdraw his nomination in the said OPC

II. Can Rohan make his 17 year old son as a nominee in such a case.

1(a)4m, MTP1, June 2022

Ans - i) Yes, it is mandatory for Z to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

ii) Yes, Z can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

OR

A) Yes, it is mandatory for Vinod to withdraw his nomination in the said OPC as he is leaving India permanently as only a natural person who is an Indian citizen and resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year shall be a nominee in OPC.

Since Vinod will not satisfy this condition, so he needs to withdraw his nomination.

B) No, Rohan cannot make his 17 year old son as a nominee of his OPC as no minor shall become member or nominee of the OPC or can hold beneficial interest.



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34 - Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances.

2(b)i)5m,MDTP10, 2(b)i)5m,Sept2024

OR

Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013.

5(b)6m,June2023, 5(b)6m,MTP2,Dec2023

OR

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.

5(b)6m,Dec2018

Ans - Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. Due to this, members of a company are shielded from liability connected to the company's actions.

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) **To determine the character of the company** i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- 2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate identity.
- 3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.
- 4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to

have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

- 5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

33 - 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 artwork of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April 2021 onwards.

However, on 30th September 2023, 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?

RTP, Sept 2024, Sim2(b)(ii)3m, MTP1, Sept 2024, RTP, June 2022

OR

Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

2)b)ii)3m, MDTP5, 6(C)3M, MTP1, June 2021, 6)c)3m, MTP1, June 2020

Ans - 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.

ABC Club was a Section 8 company, and it was observed on 30th September 2023 that it had started violating the objects of its objective clause. Hence in such a situation the following powers can be exercised by the Central Government: **OR** Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.
- iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

32 - A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held a general meeting by giving only 14 days' notice. Is this valid?

1)b)ii)3m,MDTP3, 1(b)(ii)3m,MTP2,June2024, RTP,Dec2022

OR

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

Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

1(b)4m, Dec2018, 1(b)4m, MTP2, June2023, 1(b)4m, MTP1, Dec2019

Ans - A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.

Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

OR

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

31 - What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013.

5(b)6m, Dec2020

OR

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

5(b)6m, June2019

OR

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

02, ICAI Module, 5(ii)6m, MTP1, Dec2022, RTP, June2019, RTP, June2018

Ans - Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection of the environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.

- Operates under a special licence from the Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.
- On revocation, the Central Government may direct it to
 - Converts its status and change its name
 - Wind - up
 - Amalgamate with another company having similar object.
- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of Section 8 company.

OR

Formation of companies with charitable purpose etc. (Section 8 company):

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

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

Power of Central government to issue the license-

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

- iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

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

OR

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013.

30 - HP Polytech 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 HP Polytech Limited can be treated as a Government Company. RTP, Sept2024, RTP, June2021

OR

XYZ is a company incorporated under the Companies Act, 2013.

The paid up share capital of the company is held by others as on 31.03.2024 in as under:

1) Government of India	20%
2) Life Insurance Corporation of India (Public Institution)	08%
3) Government of Tamil Nadu	10%
4) Government of Rajasthan	10%
5) ABC Limited (owned by Government Company)	15%

As per above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013.

3)b)i)4m,MDTP8,9, 3(b)i)4m,June2024, RTP,Jan2025, 3)b)4m,MTP2,Jan2025

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

- i) the Central Government, or

ii) by any State Government or Governments, or

iii) partly by the Central Government and partly by one or more State Governments,

and the section includes a company which is a subsidiary company of such a Government company.

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

Hence, HP Polytech Limited is a government company.

OR

In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%

The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%.

Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013.

29 - Nolimite 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 Nolimite 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?

1(b)i)4m,MDTP3, RTP,Sept2024, 1(b)i)4m,MTP2,June2024, RTP,Dec2022

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.

28 - ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ` 100 Crores.

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

1(b)i)4m,MDTP5, 1(b)(i)4m,MTP1,Sept2024

OR

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crores and convertible preference shares worth ` 10 crores during the financial year 2022-23. After that the total share capital of the company is ` 100 crores. Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company.

1(b)4m,June2023

OR

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 Crores and issued Non-Convertible Debentures worth ` 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ` 100 Crores and Non-Convertible Debentures stands at ` 120 Crores.

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

1(b)4m,Dec2020, RTP,June2021

OR

Manicar Limited has allotted equity shares with voting rights to Nanicar Limited worth ` 10 Crores and issued Non-Convertible Debentures worth ` 30 Crores during the Financial Year 2017-18. After that total Paid-up Equity Share Capital of the company is ` 100 Crores and Non-Convertible Debentures stands at ` 150 Crores.

Define the Meaning of Associate Company and comment on whether Manicar Limited and Nanicar Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

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

The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ` 15 crore, which is less than requisite control of 20% of total share capital (i.e. ` 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

OR

The term "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crore and convertible preference shares worth ` 10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ` 100 crore.

Since XYZ Limited is holding only 15% significant influence (` 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.

Important Note: It can be assumed that the convertible preference shareholders are having voting rights and due to this, XYZ Limited is holding overall 25% paid up share capital in ABC Limited (with voting rights). Hence, XYZ limited is having significant control over ABC Limited and therefore XYZ is an Associate company of ABC Limited.

OR

The term "Total Share Capital", means the aggregate of the -

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

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

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

OR

In the given case, as Manicar Ltd. has allotted equity shares with voting rights to Nanicar Limited of Rs. 10 crores, which is less than requisite control of 20% of total share capital (i.e. 100 crore) to have a significant influence of Nanicar Ltd. Since the said requirement is not complied, therefore Manicar Ltd. and Nanicar Ltd. are not associate companies as per the Companies Act, 2013.

Further holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence. Hence the issue of non-convertible debentures will not make both the companies Associate Company.

27 - MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31s July 2024. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

1)b)ii)3m,MDTP5, 1(b)ii)3m,MTP1,Sept2024, 6(c)3m,MTP1,Dec2023

OR

MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

6(c)3m,Dec2023

OR

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

RTP,June2018

Ans - "Inactive company" means a company which has not been carrying on any business or operation or has not made any significant accounting transaction during the last two financial years or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]

"Significant accounting transaction" means any transaction other than—

- a) payment of fees by a company to the Registrar;
- b) payments made by it to fulfil the requirements of this Act or any other law;
- c) allotment of shares to fulfil the requirements of this Act; and
- d) payments for maintenance of its office and records.

[Explanation (ii) to Section 455 of the Companies Act, 2013]

In the instant case, MTK Private Limited was registered on 5th January 2022 and did not start its business till 31st July 2024. Since the Company has not started its business and a period of more than two years has already elapsed, it will be treated as an inactive company.

OR

In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.

OR

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.

26 - Mr. Sooraj sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sooraj filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim?

2(b)i)4m,MDTP5, 2(b)i)4m,MTP1,Sept2024, 6(iii)3m,MTP1,Dec2022

Ans - According to the decision taken in the case of Salomon Vs. Salomon & Co. Ltd., a company has a separate legal entity. A company is different from its members. Further, according to the decision taken in the case of Macaura Vs. Northern Assurance Co. Ltd., a member or creditor

does not have any insurable interest in the property of the company. Members or creditors of the company cannot claim ownership in the property of company.

On the basis of the above provisions and facts, it can be said that Mr. Sooraj and CPL Private Limited are separate entities. Mr. Sooraj cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sooraj for the claim for the loss of stock by fire.

25 - Powertech Limited was registered as a public company. There are 230 members in the company as noted below:

a) Directors and their relatives	190
b) Employees	15
c) Ex-Employees (Shares were allotted when they were employees)	10
d) 5 couples holding shares jointly in the name of husband and wife (5*2)	10
e) Others	05

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

3)b)i)4m,MDTP5, 3(b)(i)4m,MTP1,Sept2024, Sim,6(iii)3m,MTP1,June2023,
6)c)3m,MTP2,June2021, 1)ii)4m,MTP1,June2020, RTP,June2019, 6)c)3m,MTP1,June2019

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

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

It is further provided that -

- A) persons who are in the employment of the company; and
- B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members.

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

Total Number of members

i)	Directors and their relatives	190
ii)	5 Couples (5*1)	5
iii)	Others	5
	Total	200

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

24 - 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:

- Whether Jagannath Oils Limited is required to reduce the number of members.**
- 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?**

1)b)7m,MDTP2, RTP,June2022, 1)b)4m,MTP2,Dec2021

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

- restricts the right to transfer its shares;
- 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—

- 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;

- (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.

23 - Popular Products Ltd. is company incorporated in India, having a total Share Capital of ` 20 Crores. The Share capital comprises of 20 Lakh equity 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. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd.

State the related provision in favour of your answer, if Jovial Ltd. controls the composition of directors of Popular Products Ltd.

3)b)ii)3m,MDTP5, 3(b)(ii)3m,MTP1,Sept2024

Ans - According to Section 2(87) of the Companies Act, 2013 "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company-

- i) controls the composition of the Board of Directors; or
- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the present case, the total share capital of Popular Products Ltd. is ` 20 crores comprised of 20 Lakh equity shares.

Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd., which amounts to less than one-half of its total voting power. 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.

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

1)b)ii)3m,MDTP6, 1(b)(ii)3m,MTP2,Sept 2024, 6(c)3m,Dec2020

OR

Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.

1)b)ii)3m,MDTP8, RTP,June2024, 6(c)3m,Dec2022, 1)b)ii)3m,MTP2,Jan2025

Ans - Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which -

i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii) conducts any business activity in India in any other manner.

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

OR

As Mike LLC is incorporated in Singapore and having a place of business in Pune, India, it is a foreign Company.

21 - Mr. Rajeev, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Mr. Rajeev as a pretended loan. This way, Mr. Rajeev divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

2)b)7m,MDTP6, 2(b) 7m, MTP2, Sept 2024, 5(ii)6m,MTP1,June2023,
1(ii)4m,MTP1,June2021, 5)b)6m,MTP2,June2021, RTP,June2019, 5)b)6m,MTP1,June2019,
1)b)4m,MTP2,June2019, 1)b)4m,MTP1,Dec2018, 1)b)4m,MTP1,June2018

OR

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

6(c)3m, Dec 2019, 05,ICAI Module

OR

ABC Pvt Ltd, has been overstating expenditures in their Profit & Loss account for the past few years. On Inquiry, it was found that the mere purpose was to avoid tax. However, there was no fraudulent intentions. Should the corporate veil of the company be lifted? Kindly justify.

RTP,Dec2022

Ans - The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate facade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the

whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

2. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckjee Petit and Juggilal vs. Commissioner of Income Tax*.

OR

In *Dinshaw Maneckjee Petit* case it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

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

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

OR

Corporate veil refers to the concept that members of a company are shielded from liability connected to the company's action. It is the legal concept whereby the company is identified separately from the members of the company. However, under the below circumstances, the company law disregards the principle of corporate personality.

- To determine the character of the company
- To protect revenue/tax
- To avoid a legal obligation
- Formation of subsidiaries to act as agents
- Company formed for fraud/improper conduct.

In the given scenario, though the intention of the company was not fraudulent to defeat law, it had the intention of avoiding taxes and protecting revenue.

Hence, corporate veil should be lifted and the principles of corporate personality will be disregarded.

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

1)b)ii)3m,MDTP4, 1(b)(ii)3m,MTP3,June2024, Sim,RTP,Dec2023, Sim,RTP,Dec2021, RTP,Jan2025

OR

The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ` 9.5 crore (95 lakh shares of ` 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ` 5 crore in the form of 5 lakh shares of ` 100 each. Z Private Limited claimed the status of a subsidiary company of ` 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?

3)b)7m,MDTP6, 1(b)4m,Dec2023, 3(b) 7m,MTP2,Sept2024, 1(b)4m,MTP1,Dec2023

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

- i) the Central Government, or**
- ii) by any State Government or Governments, or**
- iii) partly by the Central Government and partly by one or more State Governments,**

and the section includes a company which is a subsidiary company of such a Government company.

As per Section 2(87) of the Companies Act, 2013, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

- i) controls the composition of the Board of Directors; or**
- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.**

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

OR

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

19 - A company, ABC limited as on 31.03.2023 had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ` 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.

Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited.

State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013.

1)b)7m,MDTP7,9, 1(b)7m,June2024, 1)b)7m,MTP1,Jan2025

Ans - As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company -

- i) controls the composition of the Board of Directors; or

- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post issue, the total paid-up capital of ABC Limited is ` 2 lakhs (20,000 equity shares of ` 10 each).

Out of these, 5,000 shares were issued to XYZ Private Limited. Since XYZ Private Limited holds only 25% of the shares in ABC Limited, it does not have control of more than one-half of the total voting power of ABC Limited. Hence, XYZ Private Limited cannot be considered as a subsidiary company of ABC Limited in terms of the second criteria stated above, that of controlling of voting power.

XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors. But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors.

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

The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company.

Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited.

18 - M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died?

3)b)ii)3m,MDTP8,9, 3(b)(ii)3m,June2024, 3)b)ii)3m,MTP2,Jan2025

OR

In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:

- a) Is Flower Fans Private Limited no longer in existence?
- b) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?

3)b)ii)3m,MDTP1, 2(b)(ii) 3m, MTP1, June 2024, 6(iii)3m,MTP2,June2022,
6(iii)3m,MTP1,Dec2021, RTP,Dec2018

Ans - One of the features of a company is that it has perpetual succession. As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not affected, since the shares held by M and N will be legally transmitted to their legal heirs.

OR

A) Perpetual Succession - A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence.

The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

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

17 - Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were 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 filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into 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?

Note : Same question is repeated many times with Mr. Dhruv replaced as Mr. Samyak and Seven Stars is replaced with Nine Stars.

1)b)i4m,MDTP4, RTP,June2024, RTP,Dec2021, Sim,1(b)(i)4m,MTP3,June2024

OR

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

RTP,Dec2019

OR

An employee Mr. Karan signed a contract with his employer company ABC Limited that he will not solicit the customers after leaving the employment from the company.

But after Mr. Karan left ABC Limited, he started up his own company PQR Limited and he started soliciting the customers of ABC Limited for his own business purposes.

ABC Limited filed a case against Mr. Karan for breach of the employment contract and for soliciting their customers for own business. Mr. Karan contended that there is corporate veil between him, and his company and he should not be personally held liable for this.

In this context, the company ABC Limited seek your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company? 2)b)7m,MDTP2, RTP, June2022

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

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

OR

On considering the decision taken in *Gilford Motor Co. Vs. Horne* and facts of the problem given, it is very much clear that Nine 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 the separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

OR

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

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

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

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

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

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

OR

Based on the above provisions and leading case law of *Gilford Motor Co. Vs Horne*, the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

16 - AK Private Limited has borrowed ` 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ` 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

RTP, June 2024, 1(b)4m, Dec 2021

OR

Ravi Private Limited has borrowed ` 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?

1(b)4m, June 2018

Ans - This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

i) Whether AK Private Limited is liable to pay the debt?

As per the facts given, AK Private Limited borrowed ` 36 crore from BK Finance Limited which is beyond its borrowing power of ` 30 crore.

Hence, contract for borrowing of ` 36 crore, being ultra vires the Memorandum of Association and thereby is void. AK Private Limited is not, therefore, liable to pay the debt.

ii) Remedy available to BK Finance Limited:

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

OR

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

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

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

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

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

15 - ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires. With reference to the same, briefly explain the doctrine of

"ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

5(b),6m,MTP2,June2023, 5(b)6m,MTP1,June2022

OR

The Object Clause of Memorandum of Association of ABC Pvt. Ltd. authorised the company to carry on the business of trading in Fruits and Vegetables. The Directors of the company in recently concluded Board Meeting decided and accordingly, the company ordered for fish for the purpose of trading. FSH Limited supplied fish to ABC Pvt. Ltd. worth Rs. 36 Lakhs. The members of the company convened an extraordinary general meeting and negated the proposal of the Board of Directors on the ground of ultra vires acts. FSH Limited being aggrieved of the said decision of ABC Pvt Ltd. seeks your advice. Advise them.

1)b)4m,MTP1,Dec2018

Ans - Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified even by the unanimous consent of all the shareholders of the company.

Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of Memorandum of Association as it becomes ultra vires and thus null and void.

OR

Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.

14 - Mr. Raj formed a company with a capital of ` 5,00,000. He sold his business to another company for ` 4,00,000. For the payment of sale, he accepted shares worth ` 3,00,000 (30,000 shares of ` 10 each). The balance 1,00,000 was considered as loan and Mr. Raj secured the amount by issue of debentures. His wife and three daughters took one share each. Owing to strike the company was wound up. The assets of the company were valued at ` 60,000. The debts due to unsecured creditors were ` 80,000.

Mr. Raj retained the entire sum of ` 60,000 as part payment of loan. To this, the other creditors objected. Their contention was that a man could not own any money to himself, and the entire sum of ` 60,000 should be paid to them.

Examine the rights of Mr. Raj and other creditors. Who will succeed?

6(c), 3m, MTP2, June 2023, 6(c) 3m, MTP1, June 2022

Ans - Separate Legal Entity: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.

Thus, the shareholders are protected from the acts of the company. The leading case law of Saloman Vs Saloman and Co. Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members.

Based on the above discussion and provisions, Mr. Raj was entitled to the assets of the company as he was a secured creditor of the company and the contention of the creditors that Mr. Raj and the company are one and same person is wrong.

13 - The paid-up capital of Darshan Photographs Private Limited is ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares (not carrying any voting rights) of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,

a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?

b) Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darshan Photographs Private Limited?

1)b) 7m, MDTP1, 1(b) 7m, MTP1, June 2024

OR

The paid-up capital of Ram Private Limited is ` 10 Crores in the form of 7,00,000 Equity Shares of ` 100 each and 3,00,000 Preference Shares of ` 100 each. Lakhan Private Limited is holding 3,00,000 Equity Shares and 3,00,000 Preference Shares in Ram Private Limited. State with reason, Whether Ram Private Limited is subsidiary of Lakhan Private Limited? 1)ii)4m,MTP2,June2022, 1)ii)4m,MTP1,Dec2021

Ans - According to Section 2(87) of Companies Act, 2013 "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company -

- i) controls the composition of the Board of Directors; or
- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

- I) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- II) the expression "company" includes any body corporate;

It is to be noted that Preference share capital will also be considered if preference shareholders have same voting rights as equity shareholders.

In the instant case, Darshan Photographs Private Limited is having paid-up capital of ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

- a) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one - half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, Darshan Photographs Private Limited cannot be considered as subsidiary company of Shadow Evening Private Limited as for being subsidiary company other company should control more than one - half of the total voting power.
- b) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

OR

In the instant case, Ram Private Limited is having paid-up capital of ` 10 Crores in the form of 7,00,000 Equity Shares of ` 100 each and 3,00,000 Preference Shares of ` 100 each. Lakhan Private Limited is holding 3,00,000 Equity Shares and 3,00,000 Preference Shares in Ram Private Limited.

As in the given problem it is not clear that whether Preference Shares are having voting rights or not, it can be taken that there is no voting right with these shares. On the basis of provisions of Section 2(87) and facts of the given problem, Lakhan Private Limited is holding 3,00,000 Equity Shares of total equity paid up share capital of Ram Private Limited. Therefore, as Lakhan Private Limited does not exercises or controls more than one-half of the total voting power in Ram Private Limited, Ram Private Limited is not subsidiary of Lakhan Private Limited.

12 - Explain the 'Doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company?

2)b),MDTP1, 2(b)7m,MTP1,June2024, 03,ICAI Module, 5(b)6m,June2022,
5)b)6m,MTP2,Dec2021, RTP,June2020, RTP,Dec2018, 5)b)6m,MTP2,Dec2018

Ans - Doctrine of ultra vires:

The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further [Ashbury Railway Company Ltd. vs. Riche].

In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

Consequences of 'ultra vires' acts of the company:

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this one enters into a transaction which is ultra vires the company, he/she cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.

However, some ultra vires act can be regularised by ratifying them subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholders can validate such acts.

11 - 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.

3)b)i4m,MDTP1, 2(b)(i)4m,MTP1,June2024

OR

MNP Private Ltd. is a company registered under the Companies Act, 2013 with Paid Up Share Capital of ` 5 crores and turnover of ` 35 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

- i) Whether the MNP Private Ltd. can avail the status of small company?
- ii) What will be your answer if the turnover of the company is ` 45 crores?

3)b)7m,MDTP3, 3(b)7m,MTP2,June2024

OR

ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ` 35 lakhs and turnover of ` 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.

6(c)3m,June2023, 1(b)4m,MTP2,Dec2023, Sim,1)ii)4m,MTP1,Dec2020

Ans - 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.

OR

- i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 5 crores and having turnover of ` 35 crore. Since only one criteria of share capital of ` 4 crores is met, but the second criteria of turnover of ` 40 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
- ii) If the turnover of the company is ` 45 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

OR

In the instant case, since the paid-up capital of ABC Private Limited is ` 35 Lakhs and turnover is ` 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

10 - Explain listed company and unlisted company as per the provisions of the Companies Act, 2013. 2)b)i)2m,MDTP4, 2(b)(i)2m,MTP3,June2024, 5(b)(ii)2m,Dec2022

Ans - Listed company: As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

Q9 - Explain the classification of the companies on the basis of control as per the Companies Act, 2013.

2(b)ii)5m,MDTP4, 2(b)(ii)5m,MTP3,June2024, 5(b)6m,June2021, RTP,June2023

Ans - In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

a) **Holding and subsidiary companies:** 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

- i) controls the composition of the Board of Directors; or
- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

b) **Associate company [Section 2(6)]:** 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.

Explanation. — For the purpose of this clause —

- (i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

- (ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

08 - Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital.

5(b)6m, Dec2023, 5(b)6m, MTP1, Dec2023

OR

What do you mean by the term Capital? Describe its classification in the domain of Company Law.

5(b)6m, Dec2021, 5(b)6m, MTP2, Dec2022

Ans - Kinds of share capital: Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the said provision, the share capital of a company limited by shares shall be of two kinds, namely: -

1. "Equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital;
Equity share capital— can be
 - (i) with voting rights; or
 - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;
2. "Preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to -
 - (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
 - (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, despite that it is entitled to either or both of the following rights, namely:—

- (a) that in respect of dividends, in addition to the preferential rights to the amounts specified as above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

OR

Meaning of capital: The term capital has variety of meanings. But in relation to a company limited by shares, the term 'capital' means 'share capital'. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

ii) Classification of capital: In the domain of Company Law, the term capital can be classified as follows:

- a) Nominal or authorised or registered capital: This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.
- b) Issued capital: It means such capital as the company issues from time to time for subscription.
- c) Subscribed capital: As such part of the capital which is for the time being subscribed by the members of a company.
- d) Called up capital: As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.
- e) Paid-up capital: It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

07 - BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ` 30 Lakhs (3 Lakhs equity shares of ` 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?

3)b)7m,MDTP2, 6(c)3m,Dec2021, RTP,Dec2023, 6(c)3m,MTP2,Dec2022, RTP,Jan2025

Ans - Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company -

- i) controls the composition of the Board of Directors; or
- ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

- (I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (II) "layer" in relation to a holding company means its subsidiary or subsidiaries.

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

06 - The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. 5(ii)6m, MTP1, June2021, 5(b)6m, MTP1, June2020

Ans - Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

- i) **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
- ii) **Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
- iii) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Q5 - Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as subsidiary company of Popular products. Ltd., if it controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.

6(c)3m, June 2019

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

Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd. which amounts to less than one-half of its total share capital. Hence, Jovial Ltd. by virtue of share holding is not a holding company of Popular Products Ltd.

Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company. [Section 2(87) of the Companies Act, 2013]

04 - Examine with reasons whether the following statement is correct or incorrect:

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

6)c)3m,MTP2,June2019, 6)c)3m,MTP2,Dec2018, 6)c)3m,MTP1,June2018

OR

Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013?

3)c)ii)2m,Jan2025

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

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

OR

No, it is not mandatory to have common seal for the company.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

03 - What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 2013? What are the effects of registration of a company?

5)ii)6m,MTP1,June2018

Ans - Under section 7(2) the Registrar shall on the basis of documents and information filed for the formation of a company, shall register all the documents and information and issue a certificate that the company is incorporated in the prescribed form to the effect that the proposed company is incorporated under this Act. The company becomes a legal entity from the date mentioned in the certificate of incorporation and continues to be so till it is wound up.

Effects of registration of a company

Section 9 of the Companies Act, 2013 provides that, from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued by the said name. Accordingly, when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow:

- a) the company becomes a distinct legal entity. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name.
- b) it acquires a life of perpetual existence by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up.
- c) Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company as and when declared either as dividend or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders.

02 - FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.

Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013. 6)iii)3m,MTP1,June2018

Ans - As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.

Hence, the order of NCLT will be legal.

Precautions: Before making any order,—

- a) the company shall be given a reasonable opportunity of being heard in the matter; and
- b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

01 -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'.

04,ICAI Module, RTP,Dec2020, RTP,Dec2019

OR

State the limitations of the doctrine of indoor management under the Companies Act, 2013. 6(c)3m,June2018

Ans - Doctrine of Indoor Management (the Companies Act, 2013): According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v.

Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

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

- a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
- b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
- c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.



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Chapter: 7 - Negotiable Instruments Act, 1881

Question Bank

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

23 - What is a Bill of Exchange? Also, explain its essential characteristics under the Negotiable Instruments Act, 1881.

4)b)7m,MDTP2

Ans - Bill of Exchange: A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Parties to the bill of exchange

(a) Drawer: The maker of a bill of exchange.

(b) Drawee: The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.

(c) Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Essential characteristics of bill of exchange

(a) It must be in writing.

(b) Must contain an express order to pay.

(c) The order to pay must be definite and unconditional.

(d) The drawer must sign the instrument.

(e) Drawer, drawee, and payee must be certain. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. As per Section 31 of the RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

(f) The sum must be certain.

(g) The order must be to pay money only.

(h) It must be stamped.

22 - Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns. However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on

the provisions of the Negotiable Instruments Act, 1881, examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law.

6)a)ii)3m, Jan2025

Ans - Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]

As per section 64 of the Negotiable Instruments Act, 1881, promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

So, presentment for payment must be made to the person primarily liable on the instrument, or in their absence, at the proper place during the usual business hours.

In this case, Priya presented the bill at Sanjay's office during regular business hours, but since Sanjay was not present, she left the bill with his assistant.

While leaving the bill with the assistant might be considered a practical step, it does not fulfil the strict legal requirement of presenting the bill directly to the drawee (Sanjay) or his authorised representative for payment.

Therefore, the presentation of the bill by Priya to Sanjay's assistant is not valid under law.

21 - Anjali purchased various cosmetic products worth ` 15,000 during the last week from Sushil, a shopkeeper, on credit of one month. After a fortnight, she makes out a blank promissory note, signed it and delivered to Sushil who further endorsed it to Manish for the payment of his dues. Manish, who is holder in due course, filled up the due amount of ` 17,000 from Sushil and on maturity presented it to Anjali for payment but she refused to pay because the amount filled up is more than the agreed amount of ` 15,000. It is to be noted that the amount of ` 17,000 is covered by the stamp affixed on it. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether Anjali is liable to honour the promissory note to Manish for ` 17,000?

6)a)i)4m, Jan2025

Ans - Section 20 of the Negotiable Instruments Act, 1881 reads as "Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that 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 thereunder".

In the instant case, Anjali is not liable to honour the promissory note to Manish for ` 17000. She is liable only for ` 15000.

20 -What are the rules governing the compensation payable in the event of dishonour of a negotiable instrument under the provisions of the Negotiable Instruments Act, 1881?

4)b)7m,MDTP4, 4)b)7m,Jan2025

Ans - Rules as to compensation (Section 117 of the Negotiable Instruments Act, 1881):

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

19 - With reference to provisions of The Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be complied with for not constituting such an offence ?

4)b)i)4m,MDTP10, 4)b)i)4m,Sept2024

Ans - According to Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
 - amount of money standing to the credit of that account is insufficient to honor the cheque, or
 - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

When section 138 shall not apply: unless the below given conditions are complied with—

(a) Cheque presented within validity period: The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) Demand for the payment through the notice: the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) Failure of drawer to make payment: the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

18 - A) All cheques are bills while all bills are not cheques. Explain the additional features of a cheque which differentiate a cheque from bill as per the Negotiable Instruments Act, 1881.?

B) Ambiguous instrument

4)b)ii)3m, MDTP10, 4)b)ii)3m, Sept2024

Ans - (A) According to the definition of cheque under section 6 of the Negotiable Instruments Act, 1881, a cheque is a species of bill of exchange. Thus, it should fulfil all the essential characteristics of a bill of exchange.

The following two features distinguish a cheque from bill

(a) Must be drawn on a specified banker

(b) It must be payable on demand

Thus, all cheques are bills while all bills are not cheques.

(B) Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly."

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument.

17 - What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881?

4)b)7m,MDTP3,8, 4)b)7m,MTP2,Jan2025, 4)b)7m,MTP2,June2024

Ans - Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

16 - Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario :

Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties.

6)a)i)4m,MDTP8,10, 6)a)i)4m,MTP2,Jan2025, 6)a)i)4m,Sept2024

Ans - Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable. Delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57).

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid.

Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

15 - Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA-based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company.

6)a)ii)3m,MDTP8,10, 6)a)ii)3m,MTP2,Jan2025, RTP,Jan2025, 6)a)ii)3m,Sept2024

Ans - As per section 11 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

14 - What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881.

4)b)7m,MDTP1, RTP,Sept2024, 4)b)7m,MTP1,June2024

Ans - Meaning of Negotiable Instruments: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument is passed to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments, namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.

3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

13 - Manoj purchased some goods from Sagar. He issued a cheque to Sagar for the sale price on 14th June, 2023. Sagar presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable?

RTP, Sept2024

Ans - By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

- a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and
- c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Manoj issued a cheque to Sagar for payment of the price of goods purchased from him. When Sagar presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sagar should have to make a demand of payment by giving a notice in writing to Manoj upto 18th July, 2023. In case, Manoj failed in making the payment within fifteen days of the receipt of the said notice, Sagar could sue under section 138.

12 - Mr. Y issued a cheque for ` 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

- i) Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?
- ii) What would be your answer if Y issued a cheque as a donation to Mr. Z?

6)a)7m,MDTP7,9, 6)a)7m,MTP1,Jan2025, RTP,Jan2025, 6)a)7m,June2024

Ans - Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
 - amount of money standing to the credit of that account is insufficient to honour the cheque, or
 - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

In the instant case,

- i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment

for a term which may extend to two years, or with fine which may extend to Rs. 20,000, or with both.

- ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

11 - Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14th June, 2023. Sumit presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable?

6)a)7m,MDTP1, 6)a)7m,MTP1,June2024

Ans - By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

- a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and
- c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Priyansh issued a cheque to Sumit for payment of the price of goods purchased from him. When Sumit presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sumit should have to make a demand of payment by giving a notice in writing to Priyansh upto 18th July, 2023.

In case, Priyansh failed in making the payment within fifteen days of the receipt of the said notice, Sumit could sue under section 138.

10 - Shiva gave a gift of ` 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act?

6)a)ii)3M,MDTP3, 6)a)ii)3m,MTP2,June2024

OR

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

6)a)7m,MDTP4

Ans - Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

In the instant case, Shiva gifted a cheque of Rs. 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

OR

As per the facts stated in the question, Shankar (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and also gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that 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.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 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.

Accordingly, the act of Shankar, i.e., his request to stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

09 - State the Difference between promissory note and bill of exchange.

4)b)7m,MDTP5, 4)b)7m,MTP1,Sept2024

Ans - Difference between promissory note and bill of exchange:

S.No.	Basis	Promissory Note	Bill of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	Parties	In a promissory note, there are only 2 parties namely: i. the maker and	In a bill of exchange, there are 3 parties which are as under: iii. the drawer

		ii. the payee	iv. the drawee v. the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

08 - M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

6)a)i4m,MDTP5, 6)a)i4m,MTP1,Sept2024

Ans - The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

07 - 'Nakul' made promissory note in favour of 'Sahdev' of `10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881?

6)a)i4m,MDTP6, 6)a)i4m,MTP2,Sept2024

Ans - According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

06 - Rama executes a promissory note in the following form, 'I promise to pay a sum of ` 10,000 after three months'. Decide whether the promissory note is a valid promissory note.

6)a)ii)3m,MDTP5, 6)a)ii)4m,MTP1,Sept2024

Ans - The promissory note is an unconditional promise in writing. In the above question, the amount is certain but the date and name of the payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

05 - What is a cheque under the Negotiable Instruments Act, 1881, and who are the parties involved? What are the essential elements of a cheque?

4)b)7m,MDTP6, 4)b)7m,MTP2,Sept2024

Ans - CHEQUE [Section 6 of the Negotiable Instruments Act, 1881]

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to Cheque

1. **Drawer:** The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.

2. **Drawee:** The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
3. **Payee:** The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

- a) all the essential characteristics of a bill of exchange
- b) Must be drawn on a specified banker.
- c) It must be payable on demand.

04 - Utkarsh purchased some goods from Saksham for ` 50,000 on 14th August. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 pm Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August (3:00 pm). Saksham treated the bill as dishonoured for non-acceptance. Referring the provisions of the Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance?

6)a)7m,MDTP2,6, 6)a)ii)3m,MTP2,Sept2024

Ans - According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

In the instant case, Saksham drawn a bill of exchange on Utkarsh and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance.

Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

Q3 - A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act, 1881?

4)b)7m,MDTP7,9, 4)b)7m,MTP1,Jan2025, 4)b)7m,June2024

Ans - As per Section 76 of the 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.

Q2 - A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it. On maturity, B did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether A would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881?

Sim,6)a)i)4m,MDTP3, RTP,June2024, Sim,6)a)i)4m,MTP2,June2024

Ans - Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

On the basis of the above law provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, A would not be discharged from liability even if the non-presentment by B as the promissory note was payable on demand and no specific place for payment was mentioned.

01 - Sachin bought 1000 Kg rice from Saurabh for ` 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin? RTP,June2024

Ans - According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

On the basis of the above provisions of law and facts of the case, Saurabh has right to claim price of rice plus fees of advocate plus interest @18% p.a. from the date of payment until tender or realisation thereof.



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