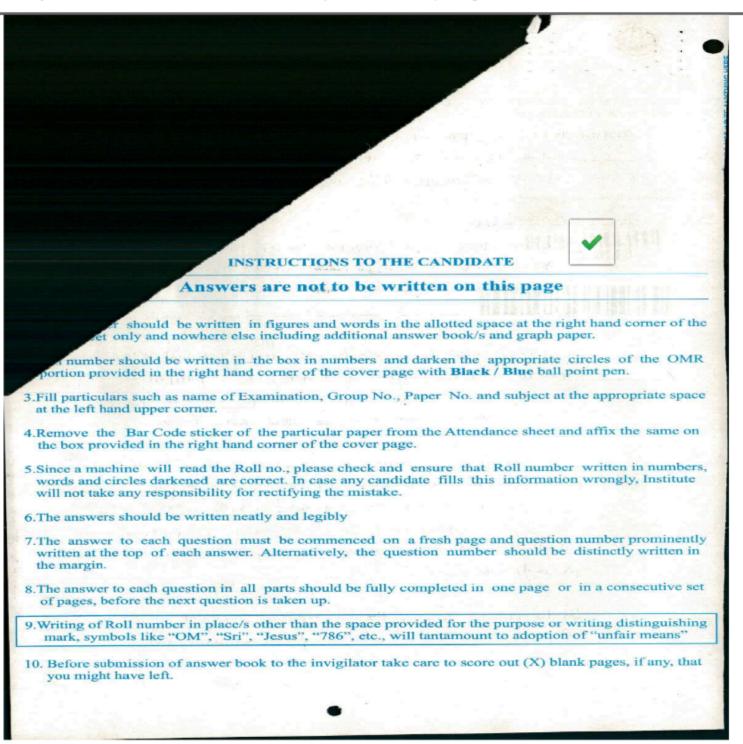
Business LAW 81 / MARK'S
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	Quy. 1(a)
1a (SECTION - A
1 (2)	Indian Contract Act, 1872, when a debtors ower several
NOT WRITE A	debts to a creditor and makes payment without which is not sufficient to discharge all debts, the payment is appropriated
1aStep1	as follows:
Табтерт	makes payment by expression stating expressly of under the
	cigaconstances implying that the payment is to be applied to a particular debt, the payment of accepted must be applied accordingly.
DO NO	debtor does not expressly state, the creditor may apply
WHITE ANY	the payment to any lawful debt due to him, at his own discretion. Provided that the debt may or may not be
NING MERE	borsed by limitation Act, 1963.
	on creditor oppropriates the payment to a particular debt, it may be applied to any debt which is or is not bassed
	by the Limitation Act, 1963 in Order of time. If the debts one of equal standing, payment may be applied
M 10H 00	accordingly.
ВПЕ ААУГТИИ	In the instant case, Mr. G. makes payment of two cheques of =12500 and =4000 to Mr. T without any notice
G E E	the amount. As per the above mentioned provision, the
1	•



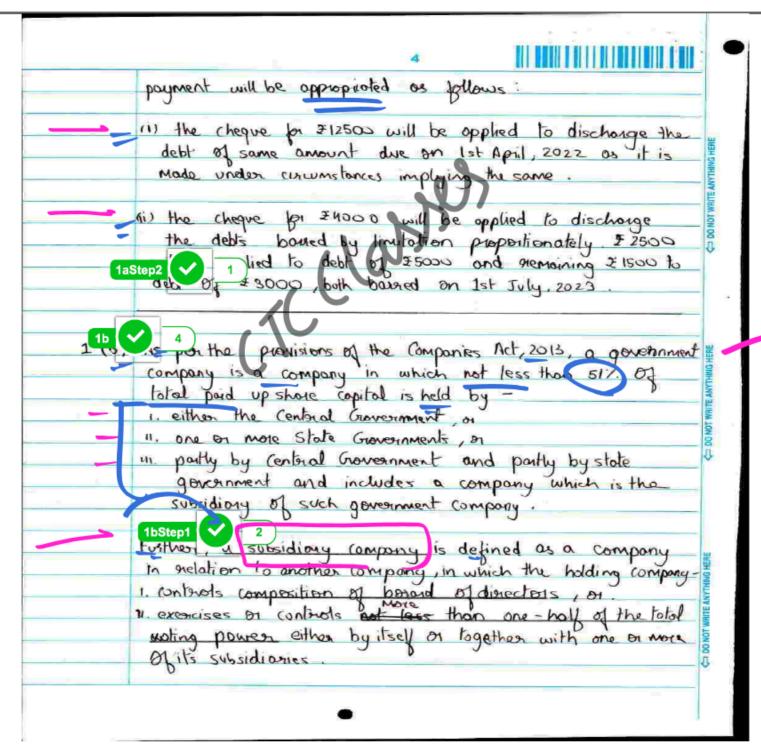


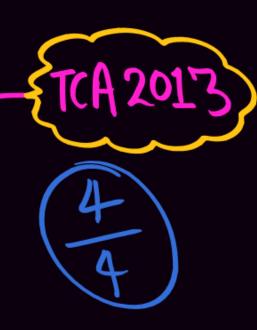
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In the instant case, y ltd. holds 250600 shores of the total 5 lobh shores of 2 limited. Therefore, 2 limited will be a subsidiory of 7 Limited as it controls more than half the total voting poures Also, it is given that State Government of x holds 43 lakh of the 95 lakh shares of Y limited, which is less than 51%. of the total paid-up capital which comes to 48.45 lakks Therefore yeld is not a government company and neither 2 limited 1bstep2 / & 2 & limited is only a subsidiory of Y Limited but not a government company As per the sale of Groods Act, 1930, the various implied womanties are as follows -Worranty as to undisturbed possession: where the buyer 4) nos purchased goods and taken possession of them, there is an implied warranty that he must enjoy peaceful and undisturbed possession of them. If disturbed, he may see the seller for damages of breach of warranty. 2. Warranty as to non-existence of encumberances: whose the buyer has purchased goods, there is an implied warranty the goods must be free from any charge of encumbrance not known or disclosed to buyer at the time or before sole.

- 1. Provision
- 2. Faut of the Care
- 3. Avalysis
- Conclusion



(a) 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.

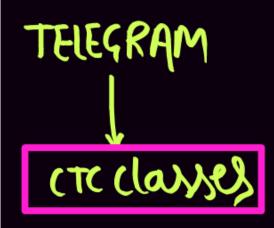
In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.

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.



- (b) 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.
- 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.

- (c) Various types of implied warranties are covered under Sections 14 and 16 of the Sale of Goods Act, 1930 which are as follows:
 - 1. Warranty as to undisturbed possession [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
 - 2. Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
 - 3. Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
 - 4. Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

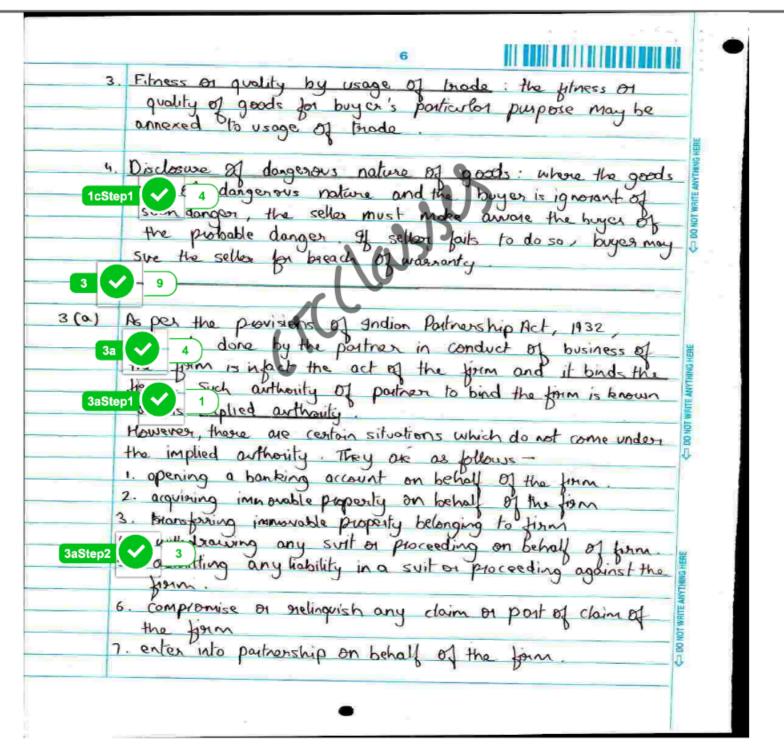


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3(b) ii) Viscen the Indian Contract Act, 1872, an invitation to a jest the Indian without a person without signifying his final willingness, proposes contain terms on whe is writing to negotiate, he does not make an after. He have an after the make an after the limites another to make an after the limites another to make an after the after It is an act precedent to making an after Acceptance of invitation to offer and in the process. 305topy 2 2 It as a sustainer picks a mobile phone or goes to the cash acustor. The shapkeeper he fuses to sell if at the price pentioned in price tag. 305topy 2 1 to the Obove Mentioned provisions, here y is making an affect to purchase the mobile phone as the price tag we just an invitation to offer. The shapkeepers has the right to reject the affect and thus y cannot see the shapkeeper for the mobile phone. 3 (b) iii Rights of J Readymade Gramments in negarid to provisions at the Indian Contract Act are with majorids to Anticipality Bisea the Indian Contract Act are with majorids to Anticipality Bisea the Indian performing his promise in it entirety, the promises multiple the promises to perform or disables himself from performing his promise in it entirety, the promise multiple the promises to perform the promise and willing the promises to perform the promise and the promises to perform the promises to perform the promises to perform the		
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(a) 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.

(b) (i) 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.

(ii) 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)].

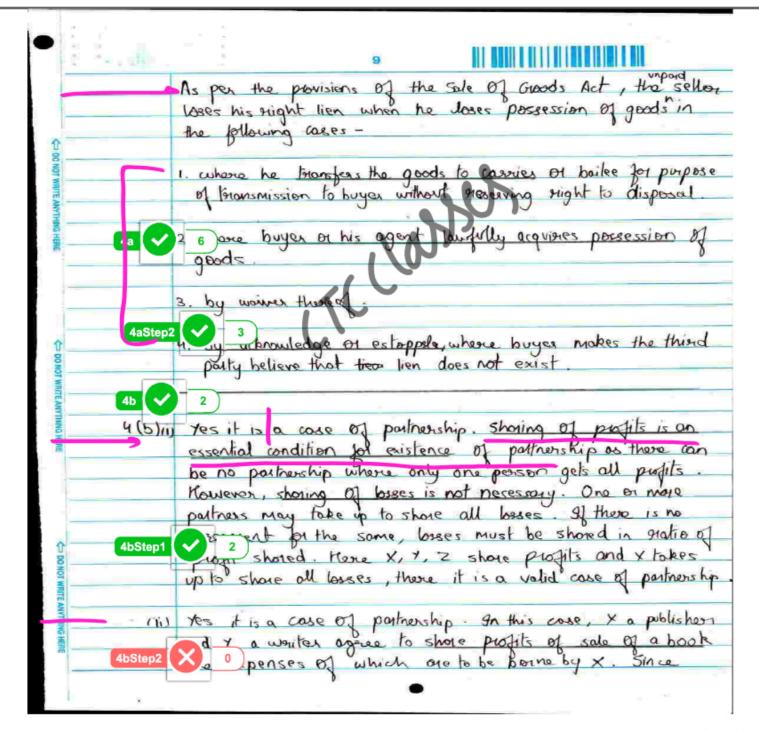


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	it is a partnership, Y will be liable for outs of X done in
	Ordinary course of business. Therefore is liable to
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	accords such amount from x under the agreement. Alteratively, it clement of mutual agency is missing, there is no partnership and no biability of Y to the paper
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	and B as they both contribute to expenses and then decide
	to share profits in terms of daily near from the leased out
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	as well as mutual agency, the arrangement might not
	Constitute partnership.
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- (a) 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 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)]

(b) (i) 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.

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.



Code: FD2BL611610

Total Marks: 100

Subject : 02 Business Laws and Business Correspondance and Reporting

Marks Obtained : 79

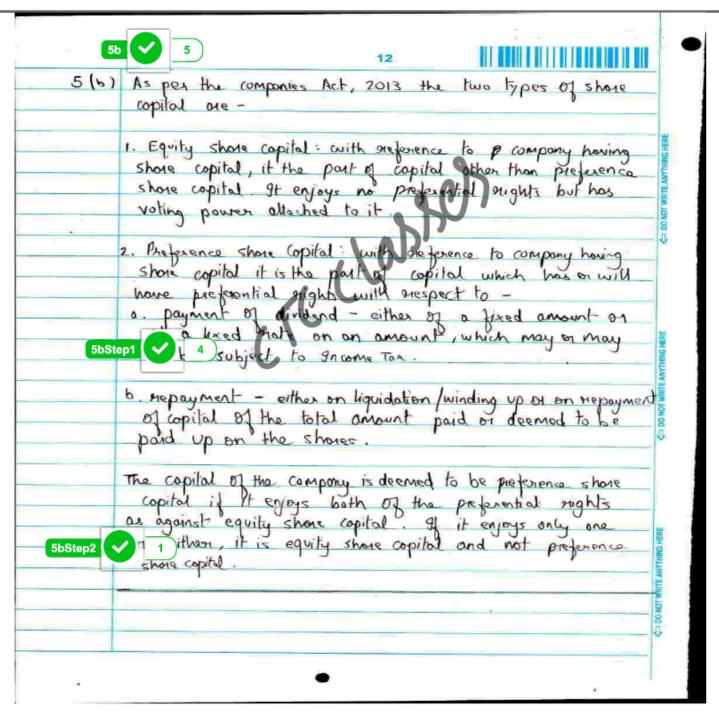
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(a) (i) As per section 30(2) of the Sale of Goods Act, 1930, where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third 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.

(ii) 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.

- (b) 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.



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Total Marks: 100

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_		of Indian Contract Act, Section 17 states that the
		folse suppresentation of what one does not believe to be tours
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HERE		by its conduct show that its silence is equivalent to speech,
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•	6 (6)	As per the provisions of Indian Partnership Act, the accounts
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曹		and finally by partners individually from their personal assets in proportion of their shore in profits.



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Total Marks: 100 Marks Obtained : 79

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6c 3	1/1/2
6(c) MTK private limited	is an inactive company as it has
not storted its busin	hes for the last two years.
The Componies Act, 20	13 defines inactive company as a
company which at a	not been coarying any business or
operations, for the or	1 does not have any significant accounting
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(a) 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.

- (b) Mode of Settlement of partnership accounts (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:-
 - 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.

(c) "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, 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.

	<u>LEARNIN</u>	G from	TOPPERS
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iii)	Preentation Matter
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