

BUSINESS LAW

81% MARK'S

" 7 POINT'S "



Code: FD2BL611610

Total Marks: 100

Subject : 02 Business Laws and Business Correspondance and Reporting

Marks Obtained : 79

INSTRUCTIONS TO THE CANDIDATE

Answers are not to be written on this page

1. Answers should be written in figures and words in the allotted space at the right hand corner of the answer sheet only and nowhere else including additional answer book/s and graph paper.
2. Roll number should be written in the box in numbers and darken the appropriate circles of the OMR portion provided in the right hand corner of the cover page with **Black / Blue** ball point pen.
3. Fill particulars such as name of Examination, Group No., Paper No. and subject at the appropriate space at the left hand upper corner.
4. Remove the Bar Code sticker of the particular paper from the Attendance sheet and affix the same on the box provided in the right hand corner of the cover page.
5. Since a machine will read the Roll no., please check and ensure that Roll number written in numbers, words and circles darkened are correct. In case any candidate fills this information wrongly, Institute will not take any responsibility for rectifying the mistake.
6. The answers should be written neatly and legibly
7. The answer to each question must be commenced on a fresh page and question number prominently written at the top of each answer. Alternatively, the question number should be distinctly written in the margin.
8. The answer to each question in all parts should be fully completed in one page or in a consecutive set of pages, before the next question is taken up.
9. Writing of Roll number in place/s other than the space provided for the purpose or writing distinguishing mark, symbols like "OM", "Sri", "Jesus", "786", etc., will tantamount to adoption of "unfair means"
10. Before submission of answer book to the invigilator take care to score out (X) blank pages, if any, that you might have left.



Ques. 1(a)

SECTION - A

1 (a)

As per the provisions regarding appropriation of payment in the Indian Contract Act, 1872, when a debtor owes several debts to a creditor and makes payment without which is not sufficient to discharge all debts, the payment is appropriated as follows:-

1aStep1

i. Where debt to be discharged is indicated: when the debtor makes payment by expressly stating expressly or under the circumstances implying that the payment is to be applied to a particular debt, the payment if accepted must be applied accordingly.

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ii. Where debt to be discharged is not indicated: where the debtor does not expressly state, the creditor may apply the payment to any lawful debt due to him, at his own discretion. Provided that the debt may or may not be barred by limitation Act, 1963.

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iii. Where neither party appropriates: where neither debtor or creditor appropriates the payment to a particular debt, it may be applied to any debt which is or is not barred by the Limitation Act, 1963 in order of time. If the debts are of equal standing, payment may be applied accordingly.

In the instant case, Mr. G makes payment of two cheques of ₹12500 and ₹4000 to Mr. T without any notice regarding appropriation and Mr. T has also not appropriated the amount. As per the above mentioned provision, the

ICA 1872

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payment will be appropriated as follows :

(i) the cheque for ₹12500 will be applied to discharge the debt of same amount due on 1st April, 2022 as it is made under circumstances implying the same.

(ii) the cheque for ₹4000 will be applied to discharge the debts borne by limitation proportionately. ₹2500 is applied to debt of ₹5000 and remaining ₹1500 to debt of ₹3000, both borne on 1st July, 2023.

1b. As per the provisions of the Companies Act, 2013, a government company is a company in which not less than 51% of total paid up share capital is held by -
i. either the Central Government, or
ii. one or more State Governments, or
iii. partly by Central Government and partly by state government and includes a company which is the subsidiary of such government company.

1bStep1. Further, a subsidiary company is defined as a company in relation to another company, in which the holding company -
i. controls composition of ^{more} board of directors, or
ii. exercises or controls ~~not less~~ ^{more} than one-half of the total voting powers either by itself or together with one or more of its subsidiaries.

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In the instant case, Y Ltd. holds 250600 shares of the total 5 lakh shares of Z Limited. Therefore, Z Limited will be a subsidiary of Y Limited as it controls more than half the total voting power.

Also, it is given that State Government of X holds 48 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 lakhs. Therefore Y Ltd is not a government company and neither is Z Limited.

1bStep2 ✓ 2 Z Limited is only a subsidiary of Y Limited but not a government company.

1 (c) As per the Sale of Goods Act, 1930, the various implied warranties are as follows -

1c ✓ 4 1. Warranty as to undisturbed possession: where the buyer has 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 sue the seller for damages of breach of warranty.

2. Warranty as to non-existence of encumbrances: where the buyer has purchased goods, there is an implied warranty the goods must be free from any charge or encumbrance not known or disclosed to buyer at the time or before sale.

1. Provision
2. Facts of the Case
3. Analysis
4. Conclusion

SOGA-1930

4/4

Answer

(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.

3 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.

9 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.

TELEGRAM



CTC classes

(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.

Conclusion 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. Fitness or quality by usage of trade : the fitness or quality of goods for buyer's particular purpose may be annexed to usage of trade.

4. Disclosure of dangerous nature of goods : where the goods are of a dangerous nature and the buyer is ignorant of such danger, the seller must make aware the buyer of the probable danger. If seller fails to do so, buyer may sue the seller for breach of warranty.

3 (a) As per the provisions of Indian Partnership Act, 1932, done by the partner in conduct of business of the firm is in fact the act of the firm and it binds the firm. Such authority of partner to bind the firm is known as implied authority.

However, there are certain situations which do not come under the implied authority. They are as follows -

1. opening a banking account on behalf of the firm.
2. acquiring immovable property on behalf of the firm.
3. transferring immovable property belonging to firm.
4. drawing any suit or proceeding on behalf of firm.
5. incurring any liability in a suit or proceeding against the firm.
6. compromise or relinquish any claim or part of claim of the firm.
7. enter into partnership on behalf of the firm.

Attempt all the Part of the Question



3b



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3(b) (i)

Under the Indian Contract Act, 1872, an invitation to offer is distinguished from an offer. Where a person without signifying his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer. He only invites another to make an offer. Price tags, quotations, menu cards are considered an invitation to offer. It is an act precedent to making an offer. Acceptance of invitation to offer does not result into contracts. Only a offer emerges in the process.

3bStep1



2

In the present case, a customer picks a mobile phone and goes to the cash counter. The shopkeeper refuses to sell it at the price mentioned in price tag.

3bStep2



1

According to the above mentioned provisions, here Y is making an offer to purchase the mobile phone as the price tag was just an invitation to offer. The shopkeeper has the right to reject the offer and thus Y cannot sue the shopkeeper for the mobile phone.

3(b) (ii)

Rights of J Readymade Garments in regard to provisions of the Indian Contract Act are with regards to Anticipatory Breach

3bStep3



2

If the promisor refuses to perform or disables himself from performing his promise, in its entirety, the promisee may put an end to the contract. Here the promisor, before the due date of performance, wilfully refuses to perform the promise.

Answer

- (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)].



In case of anticipatory breach, the promisor is discharged from his performance and gets a choice -

1. to treat the contract as repudiated and sue for damages of breach.
2. to treat the contract as subsisting and wait for due date of performance and then sue for damages of non-performance.

In the instant case T Ready made Dress Garments refuses to supply shirts before due date. Thus T Ready made Garments gets a choice -

- a. ☒ 4 ☒ 8 Rescind the contract and claim damages of non delivery.
- b. ☐ 8 to wait for due date and then rescind the claim damages of £100 on 300 pieces of each type of shirt.

4(a) Yes, an unpaid seller who has possession of goods ^{can} exercise his right of lien, when the price is not been paid or tendered, he may retain possession of goods until the payment of price in the following circumstances -

1. where goods have been sold on credit and term of credit has expired.

4aStep1



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2. where goods have been sold without any stipulation as to credit.

3. when the buyer becomes insolvent.

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As per the provisions of the Sale of Goods Act, the ^{unpaid} seller loses his right lien when he loses possession of goods in the following cases -

1. where he transfers the goods to carrier or bailee for purpose of transmission to buyer without reserving right to disposal.
2. where buyer or his agent lawfully acquires possession of goods.
3. by waiver thereof.
4. by ignorance or estoppel, where buyer makes the third party believe that lien does not exist.

4a Step2 3

4b 2

4(5)(ii) Yes it is a case of partnership. Sharing of profits is an essential condition for existence of partnership as there can be no partnership where only one person gets all profits. However, sharing of losses is not necessary. One or more partners may take up to share all losses. If there is no agreement for the same, losses must be shared in ratio of profit shared. Here X, Y, Z share profits and X takes up to share all losses, there it is a valid case of partnership.

4b Step1 2

(ii) Yes it is a case of partnership. In this case, X a publisher and Y a writer agree to share profits of sale of a book and expenses of which are to be borne by X. Since

4b Step2 0

Fullfill the Question Requirement



10



it is a partnership, Y will be liable for acts of X done in ordinary course of business. Therefore Y is liable to the paper dealer for paper supplied to X, but he may recover such amount from X under the agreement.

Alternatively, if element of mutual agency is missing, there is no partnership and no liability of Y to the paper dealer.

(iii) Yes the arrangement constitutes a partnership between A and B as they both contribute to expenses and then decide to share profits in terms of daily rent from the leased out

4bStep3



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Alternatively, since business must exist for existence of partnership as well as mutual agency, the arrangement might not constitute partnership.

5 (a)

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11

the provisions of Sale of Goods Act, 1930, where goods are delivered to the buyer with the

5a



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that property in goods shall pass to the buyer only after it is paid for, then the property in goods does not pass to the buyer until condition is fulfilled i.e. price is paid for.

In the instant case, X delivers furniture to buyer under agreement that property passes on payment of last of the three installments. But before such

Answer

(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 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)]

- (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.



11



5aStep1



2

payment, Y sold the furniture to Z who purchased in good faith.

Here, the sale by Y is not valid as the property in goods had not transferred to him and he cannot give better title to goods even to a bona fide purchaser. X can recover the furniture from Z.

Alternatively, it is the exception to the rule of Nemo dat quod non habet that a buyer in possession of goods may transfer title to goods before property in goods has vested in him may be applied. Provided the goods were sold for value and in good faith.

Here X cannot recover the furniture from Z.

5aStep3



2

(ii) As per the provisions of Sale of Goods Act, 1930, where a buyer has accepted part delivery of goods in part of whole of the goods, he must pay for the part delivery in case of breach.

In the instant case, R agrees to sell against B's tender 1000 kg of tomatoes of which he could deliver only 700 kg which B had accepted. Later R fails to supply the rest.

As per the above mentioned provisions, B cannot refuse to pay R and must pay for 700 kgs @ ₹100 as he had tendered the price and accepted part delivery of goods.

However, B may sue for damages of non-delivery of the remaining 300 kg.



5b



5

12



5(b) As per the companies Act, 2013 the two types of share capital are -

1. Equity share capital: with reference to a company having share capital, it is the part of capital other than preference share capital. It enjoys no preferential rights but has voting power attached to it.

2. Preference share capital: with reference to company having share capital it is the part of capital which has or will have preferential rights with respect to -

a. payment of dividend - either of a fixed amount or a fixed rate on an amount, which may or may not be subject to income tax.

b. repayment - either on liquidation/winding up or on repayment of capital of the total amount paid or deemed to be paid up on the shares.

The capital of the company is deemed to be preference share capital if it enjoys both of the preferential rights as against equity share capital. If it enjoys only one of them, it is equity share capital and not preference share capital.

5bStep1



4

5bStep2



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Answer

- (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.



13

6(a)

6



11

Mere silence does not amount to fraud. As per the provisions of Indian Contract Act, Section 17 states that the false representation of what one does not believe to be true or active concealment of material facts with an intent to deceive another person is fraud. However, mere silence as to facts regarding the subject matter is not fraud. A person is not bound to disclose all relevant facts which are likely to affect the willingness of the other to enter into contract.

6a



4

There are certain exceptions to this rule. Mere silence amounts to fraud when -

6aStep1



4

1. Where there is the duty of person to speak: where the person is in a fiduciary relationship, it is the duty of person to disclose all relevant facts like in contracts of insurance.

2. Where silence is equivalent to speech: where the party by its conduct shows that its silence is equivalent to speech, it may amount to fraud.

6(b)

6b



4

As per the provisions of Indian Partnership Act, the accounts of the firm after dissolution shall be settled as follows:

1. Losses, including deficiency in capital shall first be paid out of profits, then if required out of capitals of partners and finally by partners individually from their personal assets in proportion of their share in profits.



11. the assets of the firm shall be applied in the following order :

- 6bStep1 ✓ 4
- (i) to discharge all debts and liabilities to third parties
 - (ii) to pay each partner ^{notably} what is due to him from capital.
 - (iii) to pay each partner & notably what is due to him on account of capital.
 - (iv) surplus if any shall be distributed among partners in ratio of their share of profits.

6c ✓ 3

6(c) MTK private limited is an inactive company as it has not started its business for the last two years. The companies Act, 2013 defines inactive company as a company which has not been carrying any business or operations, for the or does not have any significant accounting transaction for the last two years or has not filed its financial statements with the registrar of companies for the last two financial years.

6cStep1 ✓ 2

it is also eligible to apply for status of a dormant company.

Significant accounting transaction here means transactions other than

- 6cStep2 ✓ 1
- 1. to registration for the prescribed fee.
 - 2. allotment of shares for requirements of this Act.
 - 3. payment made for fulfilling requirements of this Act.
 - 4. payment for maintenance of office and records.

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Answer

- (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:-

- (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.

(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.

LEARNING from TOPPER'S

- i) underline key words → "Match with Suggested Answer"
- ii) Practical Problem → Provision
fact of question
Analogy
Conclusion
- iii) Presentation Matter — 2, 3, 4, 5, 6, 7 Marks

- (iv) Question Complete Reading → 15 Min. Reading Time
→ Penul Allowed → keyword → 100%
- (v) New Question → new Page
- (vi) Fulfill the Question Requirement
- (vii) Attempt all the Part of the Question

(4) _____, _____ (3)
7 _____ 7 Marks
Step a) - 4 _____
Step b) - 3 _____

