



Q1	Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
(a)	If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
(b)	If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?
Ans:	
(a)	Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as a natural person who is an Indian citizen and 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 a nominee in OPC.
(b)	Yes, Navita 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 120 days during the immediately preceding financial year.
ICAI STUDY MAT.	
Q2	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
OR	
A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31 st 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.
OR	
	A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1 st April, 2017 onwards.
	However, on 30 th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.
	Discuss what powers can be exercised by the central government against ABC club, in such a case?
Ans:	Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to:
	<ul style="list-style-type: none"> 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 profits Prohibiting its object and Prohibiting the payment of any dividend to its members.
Powers of Central Government to issue 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 an application register such person or association as a company under this section.
(iii)	On registration the company shall enjoy same privileges and obligation as of a limited company.
MAY-2019 / NOV-2018 / RTP	
	Revocation of license:
	The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this section 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.
	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.
	On revocation of the licence, the Register shall put 'limited or 'private limited' against the name of the company in its register.
Q3	"The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association.
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.
	Contents of Memorandum:
(a)	Name Clause: the name of the company must end with the words "limited" in case of Public Limited Company or "private limited" in case of Private Limited Company
(b)	Registered Office Clause: The state in which the registered office of the company is situated.
(c)	Object Clause: The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance

	therefore, is state in this clause.
(d)	Liability Clause: The liability of members of the company, whether limited or unlimited and also states how the liability is limited. Company limited by shares and company limited by guarantee.
(e)	Capital Clause: The amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take. A company not having share capital need not have this clause.
(f)	Association Clause: The Memorandum shall conclude 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.
NOV- 2019	
Q4	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.
Ans:	
(a)	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.
RTP/MAY 2020	



(b)	<i>A private limited company must have a minimum of two members, while a public limited company must have at least seven members.</i>
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.</i>
Q5	<i>Briefly explain the “doctrine of ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company?</i>
Ans:	<i>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 powers. 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. 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.</i>
	<i>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</i>

by the shareholders of the company.

ICAI STUDY MAT.

Q6 *Mike Limited Company 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?*

Ans: *Foreign company means any company or body corporate incorporated outside India, which:*

(a) *Has a place of business in India, whether by itself or through agent physically or through electronic mode and;*

(b) *Conduct any business activity in India in any other manner.*

According to the given case, Mike Limited Company incorporated in India having liaison office at Singapore.

Thus, as it is incorporated in India it is an Indian Company and not a foreign company.

NOV - 2022 / NOV - 2020

Q7 *ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs. 15 Crores and issued Non-Convertible Debentures worth Rs. 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is Rs. 100 Crores and Non-Convertible Debentures stands at Rs. 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?

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 share capital, or control of business decisions under an agreement.
	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 Rs. 15 cr, which is less than requisite control of 20% of total share capital (i.e. 100cr) 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.

RTP MAY 21/ MAY 2020/ JUNE 2023/ NOV-2020

Q8	SK Infrastructure Limited has a paid up share capital divided into 6,00,000 equity shares of Rs. 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.
Ans:	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, paid up share capital of SK Infrastructure Limited is






6,00,000 equity shares of Rs. 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, SK Infrastructure Limited is a government company.

RTP/JAN 2021

Q9	Popular Products Ltd. is company incorporated in India, having a total Share Capital of 20 Crores. The Share capital comprises of 12 Lakh equity shares of Rs. 100 each and 8 Lakhs Preference Shares of Rs. 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.
Ans:	A subsidiary company in relation to any other company means a company in which the holding company-
(i)	Controls the composition of the Board of Director, 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.
	A company is holding company in relation to one or more other companies means a company of which other company are subsidiary company.
	In the given case Jovial Ltd. is controlling the composition of the Board of Director of Popular Products Ltd. and hence it can be called as Holding Co. of Popular Products Ltd. and Popular Products Ltd., its subsidiary.




MAY-2019

Q10	Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?	
Ans:	It was decided by the court in the case of <i>Gilford Motor Co. Vs. Horne</i> , that 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 <i>Gilford Motor Co. Vs. Horne</i> 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 separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.	
	RTP	
Q11	ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows: Directors and their relatives 190 Employees 15 Ex-employees 20 (Shares were allotted when they were employees) others 20 (Including 10 joint holders holding shares jointly in the name of father and son)	
	The Board of directors of the company propose to convert it into a private company. Advise whether reduction in the number of members is necessary for conversion	
Ans:	"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 purpose of this clause, be treated as a single member.	
	It is further provided that-	
	(a) Person who are in the employment of the company; and (b) Persons who, having been formerly in the employment to 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, Total No. of Members of ABC Ltd. will be counted as follow:	
	1. Directors & their relatives- 190	
	2. Other (10 couple) (10 x 1) - 10	
	200	
	Since No. of member do not exceed 200. Therefore, there is no need for reduction in the number of members.	


RTP/JAN 2021

Q12	NarendraMotors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of Rs. 100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?
Ans:	According to the provisions of Section 2(45) of 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.
	According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding 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, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited.
	Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.
	RTP / DECEMBER 2023/RTP / NOV. 2021

Q13	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?
Ans:	Section 2(62) of companies' act, 2013 defines one person company as company which has only person as member. OPC has been introduced to encourage entrepreneurship and corporatization of business.
	Rules regarding OPC membership :
1.	Only a natural person who is an Indian citizen and 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 be eligible to incorporate OPC and a nominee for sole member of OPC.
2.	No person shall be eligible to incorporate more than one person company or become nominee in more than one such company.
3.	No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
	Conversion of a non-profit company under section 8 or a private company :
	Such company cannot be incorporated or converted into a company under section 8 of the act, though OPC can be converted to private or public companies in certain cases.
Q14	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.
Ans.	The cases on the basis of which the principle of Corporate Personality of a company can be disregarded under the Companies Act, 2013 are:
1.	To determine the character of the company i.e. to find out whether company is an enemy or friend: A company may be characterised as an enemy company, if its affairs are under control of people of enemy country. (Case law - Diamler co Ltd vs Continental Tyre and Rubber

	Company)	
2.	<u>To protect revenue / tax:</u> In certain matters concerning the law of taxes duties and stamps particularly where question of the controlling interest is in issue. (Case law –S Berendsen Ltd Vs Commisioner of Inland Revenue)	
3.	<u>To avoid a legal obligation:</u> 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 Real Transaction. (Case Law – Workmen of Associated Rubber industry Lts V/s Associated Rubber Industry Ltd)	
4.	<u>Formation of subsidiaries as agents:</u> 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.	<u>Company formed for fraud/ improper conduct or to defeat law:</u> 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.	

NOV- 2018

Q15	Ravi Private Limited has borrowed 35 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.?	
	OR	
	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?
Ans.	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.
	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
	If you have lent money to the company on such a transaction, you cannot recover it from the company. But, if the money has not been expended, then lender may bring an injunction order on the Co. to stop it from parting from it. This is because company does not become owner of it.
	However, if the money has been used, then lender slips into the shoes of the debtor paid - off and consequently can recover his loan to that extent. In the given case, the transaction is ultra-vires and hence the company Ravi Private Limited is not liable to pay the debt. Mudra Finance Ltd. may bring injunction order on Ravi Pvt. Ltd. to stop it from parting with the funds.



MAY - 2018 / DEC - 2021 / RTP

Q16	Mr. X had purchased some goods from M/s ABC on credit. A credit period of one month was allowed to Mr. X. Before the date Mr. X went to the company and wanted to repay the amount due him. He found only Mr. Z there, who was the factory supervisor of company. Mr. Z told Mr. X that the accountant and the cashier were leave, he is in-charge of receiving money and he may pay the amount to him Mr. Z issued a money receipt under his signature. After two months M/S ABC Limited issued a notice
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Ans:	Corporate Veil: <i>Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.</i>
	<i>The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions.</i>
	<i>If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.</i>
	<i>In other words, they enjoy corporate insulation.</i>
	<i>Thus, the shareholders are protected from the acts of the company.</i>

	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.
	

IDHY	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:

(v) Company formed for fraud/improper conduct or to defeat law.


RTP

Q23	Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 1956. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.
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Ans:	Doctrine of Indoor Management (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
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	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 <i>Royal British Bank v. Turquand</i> . Thus, the doctrine of indoor management aims to protect outsiders against the company.		The protection of the “Turquand Rule” is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiff accepted a transfer of a company’s property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company’s property.
	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:	RTP	Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual “that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it.” Any other rule would “place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf.”
(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. <i>In Howard vs. Patent Ivory Manufacturing Co.</i> where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained. <i>Likewise, in Morris v Kanssen,</i> a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.		(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. Forgery may in circumstances exclude the ‘Turquand Rule’. The only clear illustration is found in the Ruben v Great Fingall Consolidated . In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant’s company. The company’s secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.
(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.		

Q24	<p>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:</p>	<p>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.</p>
(a)	<p>Whether Jagannath Oils Limited is required to reduce the number of members.</p>	<p>(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</p>
(b)	<p>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?</p>	
Ans:	<p>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,—</p>	<p>Q25 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?</p>
(i)	<p>restricts the right to transfer its shares;</p>	
(ii)	<p>except in case of One Person Company, limits the number of its members to two hundred;</p>	<p>Explain in the light of the provisions of the Companies Act, 2013.</p>
	<p>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;</p>	
	<p>Provided further that—</p>	<p>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.</p>
(A)	<p>persons who are in the employment of the company; and</p>	
(B)	<p>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</p>	<p>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</p>
(iii)	<p>prohibits any invitation to the public to subscribe for any securities of the company;</p>	
(a)	<p>Following the provisions of Section 2(68), 25 members were employees</p>	



	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.		
		RTP	
Q 26	Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?		
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 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 the company is an unlimited company. Mr. Innocent is liable 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.		
		RTP	
Q 27	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:		
	(i) Is Flower Fans Private Limited no longer in existence?		
	(ii) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?		
Ans.		RTP	
	(i) 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.		
	(ii) 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.		
Q 28	Explain the classification of the companies on the basis of control as per the Companies Act, 2013.		
Ans.	In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:		


<p>(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—</p> <p>(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.</p>	<p>Q29 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?</p> <p>Ans: Section 2(87) of the Companies Act, 2013 defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—</p> <p>(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;</p> <p>For the purposes of this section —</p>
<p>(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.</p> <p>Explanation. — For the purpose of this clause —</p> <p>(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.</p> <p>The term "Total Share Capital", means the aggregate of the —</p> <p>(1) Paid-up equity share capital; and (2) Convertible preference share capital.</p>	<p>(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.</p> <p>(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.</p>





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MTP



	Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.
Q30	What is the main difference between a Guarantee Company and a Company having Share Capital?
Ans:	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 <i>Narendra Kumar Agarwal vs. Saroj Maloo</i> , 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.
	JULY 21
Q31	What do you mean by the term Capital? Describe its classification in the domain of Company Law.
Ans:	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.

	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.
	DECEMBER 2021
Q32	Explain listed company and unlisted company as per the provisions of the Companies Act, 2013 
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 the 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.
	NOV 2022

Q33 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.

Ans: **Small Company:** Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—
(i) paid-up share capital of which does not exceed ₹ 4 crore or such higher amount as may be prescribed which shall not be more than ₹ 10 crore; and



(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ₹ 40 Crore or such higher amount as may be prescribed which shall not be more than ₹ 100 crore;

Exceptions: This clause shall not 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, 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.

JUNE 2023

Q1	State with reasons whether the following statements are Correct or Incorrect:	(d)	Goods' means every kind of movable property other than actionable claim and money
(a)	Actionable claim is a subject-matter of contract of sale.	Ans:	The Statement is Correct: "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
Ans:	The Statement is Incorrect: According to Sec2(7) of the Sale of Goods Act, 1930, Definition of Goods Clearly Excludes Actionable Claim. Hence Actionable claim is not a subject matter of the contract of sale as Contract of sale Just Covers Contract of sale of Goods(Movable Properties)		
	NOV- 1995		NOV- 1999
(b)	"Exchange of goods for goods between the two parties amounts to sale under the Sale of Goods Act, 1930"	(e)	"Contract of Sale can also take place by the conduct of the parties to the contract"
Ans:	The Statement is Incorrect: When goods are exchanged for goods, it is not a contract for sale of goods but it is just barter (ie exchange of goods for goods) . In sale there must be consideration in the form of money which is not possible in Barter transaction, hence it does not amount to sale under the Sale of Goods Act, 1930.	Ans:	The Statement is Correct: According to the provisions of the act, Subjected to any law for time being in force, a contract of sale may be expressed or may be implied from the conduct of the parties.
	MAY- 99		MAY- 2001
(c)	A bailment is the delivery of goods by one person to another for some purpose.	(f)	"In an agreement to sell, the property in the goods passes to the buyer immediately"
Ans:	A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished to the bailor or are to be disposed of according to the directions of the bailor.	Ans:	The Statement is Incorrect, In an agreement to sell, property in the goods is to be transferred to the buyers at some future date, or subjected to the fulfilment of some conditions.
	NOV- 1999		NOV- 2002
		Q2	A agrees to buy a new TV from a shop keeper for Rs. 30,000 payable partly in cash of Rs. 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer.

Ans:	<i>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 Rs. 30,000 and the price is payable partly in exchange of old TV set and partly in cash of Rs. 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.</i>
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May -2002 / ICAI STUDY MAT.

Q3	<i>State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.</i>
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Ans:	<i>Essential Elements of Contract of Sale : The following elements must co-exist as to constitute a contract of sale of goods under the Sale of Goods.</i>
1.	<i>There must be at least two parties the seller and the buyer, the two must be different persons.</i>
2.	<i>The subject matter of the contract must necessarily be goods (covering only movable property)</i>
3.	<i>A price in money (not in kind) should be paid or promised.</i>
4.	<i>A transfer of property in goods from seller to the buyer must take place.</i>
5.	<i>A contract of sale must be absolute or conditional .</i>
6.	<i>All other essential elements of a valid contract must be present in the contract of sale.</i>

MTP / RTP




Q4	<i>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?</i>
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Ans:	<i>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>
(i)	<i>There is an agreement to sell between A and B</i>
(ii)	<i>It is related to specific goods</i>
(iii)	<i>The goods are lost because of the sinking of ship before the property or risk passes to the buyer.</i>
(iv)	<i>The loss of goods is not due to the fault of either party.</i>

ICAI STUDY MAT.

Q5	<i>Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim?</i>
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Ans:	<i>Essentials of Sale: The problem as given in the question is based on Section 16(2) of the Sale of Goods Act, 1930, which states that 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. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used. In the instant case, on an examination of the bottle of cold drink, it exploded and injured</i>
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	the buyer. Applying the provision of Section 16(2), Mr. Amit would succeed in claim for damages from the owner of the shop.	
		RTP
Q6	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?	
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. 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.	
		ICAI STUDY MAT.
Q7	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.	
(i)	A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.	
(ii)	T agrees to sell to S all the apples which will be produced in his garden this year.	

Ans:	A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods become 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.	
(i)	If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.	
(ii)	T agrees to sell to S all the apples which will be produced in his garden this year. It is a contract of sale of future goods, amounting to 'an agreement to sell.'	
		ICAI STUDY MAT.
Q8	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?	

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.
RTP	
Q9	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?
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.
Q10	Write short note on: "Good" in a Contract of Sale.
Ans:	Goods: Goods means every kind of movable property other than actionable claims and money. Goods includes stock and shares, growing crops, grass and things attached to or forming part of land, which are agreed to be severed before sale or under the contract of sale. Goods include both tangible and intangible goods like goodwill, copyright, patent, trademark etc.
Q11	What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery.
Ans:	Delivery of goods means voluntary transfer of possession of goods from one person to another. Various Modes Of Delivery : 1. Actual Delivery: When goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers physical possession of goods to buyer, to a third person authorised to hold goods on behalf of the buyer. 2. Constructive Delivery: When it is effected without any change in custody/ actual possession of things as in case of "Delivery of Attornment" (Acknowledgment). Constructive delivery takes place when a person in possession of the goods belonging to the seller acknowledges to the buyer, that he holds the goods

on buyer's behalf.

3. **Symbolic Delivery:** When there is delivery of things in token of a transfer of something else. Delivery of goods in course of transit may be made by handing over documents of title to goods like, bill of lading, railway receipt, delivery, order, key of a warehouse containing the goods is handed over to buyers.

When actual delivery is not possible there may be delivery of means of getting possession of goods.



MAY- 1997

Q12 Differentiate between Ascertained and Unascertained Goods with example.

Ans:

1. **Ascertained Goods:**

- (i) Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made.
(ii) This term is not defined in the act but has been judicially interpreted.

Example: A wholesaler of cotton has 100 bales in his godown. He agrees to sale 50 bales and these bales were selected and set aside. On selection the goods become ascertained.

2. **Unascertained Goods:**

- (i) Unascertained Goods are those goods which are not specifically identified or ascertained at the time of making the contract.
(ii) They are indicated or defined only by description or sample.

Example: If A agree to sell to B, one packet of salt out of lot of 100 packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.



Q13 Briefly explain the distinguish between future goods and Contingent goods.

Ans: **Future Goods:**

- (i) Future goods means goods to be manufactured/ produced or acquired by seller after making contract of sale.
(ii) A contract of sale of future goods is always an agreement.
(iii) It is never actual sale because, a person cannot transfer what is not in existence.
(iv) **Example:** Tanmay agreed to sell all the oranges which will be produced in his garden this year. It is a contract of sale of future goods, amounting to an agreement to sell.



Contingent Goods :

- (i) The acquisition of which by seller depends on an uncertain contingency are called contingent goods.
(ii) Contingent goods also operate as "An agreement to sell" and not a "sale" so far as the question of passing property to the buyer is concerned.
(iii) In other words, like the future goods, in case of contingent goods also the property does not pass to buyer at the time of making the contract.

Q14 Distinguish between Existing goods and Contingents goods.

Ans: **Existing Goods :**

Existing goods are such goods as are existence at the time of contract of sale, that is owned, possessed, acquired by the seller at the time of contract of sale.

Contingent Goods :

The acquisition of which by seller depends on an uncertain contingency are called contingent goods. Contingent goods also operate as "An agreement to sell" and not a "sale" so far as the question of passing property to the buyer is concerned



MAY- 1997

Q15	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?
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.



VIDHYODAY
VIDHYA KA UDAY

Q16	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?
Ans:	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.



Q1	State with reason whether the following statement is Correct or Incorrect:
(a)	If a seller does not disclose the dangerous nature of the goods to be sold to the buyer he breaches the contract
Ans:	Incorrect: If a seller does not disclose the dangerous nature of the good to be sold to the buyer and the buyer is ignorant of the danger, it is a breach of implied warranty. In case of implied warranty it is the duty of the seller to warn to the buyer of the probable danger of the dangerous nature of the goods. It is not breach of condition but it is merely a breach of implied Warranty and the seller will be liable for damages and not for Repudiation of contract.
	NOV - 1998
(b)	"Where the buyer elects to treat the breach of condition as one of warranty, he may repudiate the contract"
Ans:	Incorrect: Section 13 of the sale of Goods Act, 1930 lays down that where the buyer elects to treat the breach of condition as one of a warranty, he may only claim damages instead of repudiating the contract
Q2	In a sale of goods , "Goods" sold must be of merchantable quality.
Ans:	Goods Must be of merchantable Quality: When the goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer pr producer or not there is an implied condition that goods shall be of Merchantable Quality.
	<u>There are two requirements for this condition to apply :</u>
1.	Goods should be brought by description
2.	Seller should be a dealer in goods of that description.
	NOV - 1998

Q3	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 accept return of 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 serving his purpose?
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.
	ICAI STUDY MAT.
Q4	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?
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 good 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 judgment 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.
	RTP
Q5	Write short notes on "Implied warranties in a contract of sale"
Ans:	Implies Warranties : Implied warranty is warranty which law implies into the contract of sale. It is the stipulation which has not been included in contract of sale in express words but law presumes that the parties have incorporated it into their contract.
	Implied warranties are considered in to every contract of sale unless they are expressly excluded by express agreement of parties.
	MAY- 1999
Q6	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 Rs. 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



	<i>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?</i>
	<i>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?</i>
	<i>What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?</i>
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.
	In the instant case, in the light of the provisions 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.
	Also in the instant case, the buyer does not have any option available to her 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.



Q7	<i>What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when a 'breach of condition' be treated as 'breach of warranty' under the provision of the Sales of Goods Act, 1930?</i>
Ans:	Difference between conditions and warranties: Refer Notes <u>Breach of condition be treated as a breach of warranty</u>
(i)	When the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be voluntary waiver by buyer.
(ii)	Where the buyer elects to treat the breach of the conditions, as breach of warranty. Buyer may claim only damages instead of repudiating the contract.
(iii)	Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
(iv)	Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.
Q8	<i>X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests car 'Santro' and X accordingly buys it from Y. The car turns out to be unfit for touring purposes. What remedy X is having now under the Sale of Goods Act, 1930?</i>
Ans:	<u>Condition and warranty</u> : A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. "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". 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 fulfillment defeats the very purpose for which X purchases the car. X is therefore entitled to reject the car and have refund of the price.



RTP






ICAI STUDY MAT.


Q9	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 band 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)	Discuss whether Mr. T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930?
(ii)	What is the remedy available to Mr. M?
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.

RTP

Q10	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?
Ans:	According to Provisions 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 judgment 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.
Q11	"State the law relating to sale by description"
Ans:	When there is contract of sale of goods by description, there is implied condition that the goods shall correspond with description.
1.	If you contract to sell peas, you cannot compel buyer to take beans.
2.	The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
3.	If the description was essential for identifying the goods and buyer agreed to purchase and good does not correspond with description the buyer is entitled to reject the goods.

MAY- 1996

Q12	Define the term 'warranty'. What are the kinds of implied warranties under the provisions of Sale of Goods Act, 1930?
Ans:	Warranty is stipulation collateral to main purpose of the contract the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as repudiated. 
	Implied warranties:
(i)	Implied warranty is warranty which law implies into the contract of sale.
(ii)	It is the stipulation which has not been included in contract of sale in express words but law presumes that the parties have incorporated it into their contract.
	MTP / NOV- 1996
Q13	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?
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.
	MTP / RTP
Q14	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.
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. 
	ICAI STUDY MAT.
Q15	A person purchased bread from a baker's shop. The piece of bread contained 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?

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.

ICAI STUDY MAT.



Q16 "A contract of sale is not avoided even on account of breach of a condition"

Ans: The Sale of Goods Act, 1930 defines a condition as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as having been repudiated. Thus it is clear from the definition, that the buyer gets the right to avoid the contract in case of a breach of a condition on a contract of sale of goods. But the law does not force the buyer to avoid the contract in case of breach of a condition. The buyer can treat the breach of a condition, as a breach of a warranty. He also gets a right to waive the condition.

Further, where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof, then he cannot avoid the contract. Further, where the law excuses the fulfilment of a condition or warranty, then the breach of a condition shall not allow the buyer to repudiate the contract. Thus, a contract of sale can be avoided by the buyer in case of breach of a condition and therefore, the statement as given in the question is not true.



NOV- 2000

Q17 Define the terms 'Condition' and 'Warranty' as used in Sale of Goods Act. Can a breach of warranty be treated as a breach condition and vice-versa?

Ans: **Condition:** Condition is stipulation essential to main purpose of the contract the breach of which gives rise to a "Right to treat Contract as Repudiated."

Warranty: Warranty is stipulation collateral to main purpose of the contract the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as repudiated.

MAY-1997/2000 / NOV-2001/2002



When Condition to be treated as Warranty:

1. When the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be voluntary waiver by buyer.
2. Where the buyer elects to treat breach of condition as breach of warranty. Buyer may claim only damages, instead of repudiating the contract. Buyer has not waived the condition but decided to treat it as a warranty.




Q18 What are the implied conditions in a Sale by Sample?


Ans: **Following are Implied Conditions:**

(i) **Condition as to Title:** In every contract of sale, unless there is an agreement to contrary the first implied condition on part of seller is that in case of sale he has right to sell goods and in case of agreement to sell he will have right to sell the goods at time when property is to pass.

(ii) **Sale by Description:** If you contract to sell peas, you cannot compel buyer to take beans. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. If the description was essential for identifying the goods and buyer agreed to purchase and good does not correspond with description the buyer is



	<p>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. ?Explain according to the provisions of the act?</p>
Ans:	<p>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 judgement and makes a bad selection, he cannot blame anybody except himself.</p> <p>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."</p>
	<div style="text-align: center;">  </div>
	<div style="text-align: center;"> <div>JAN- 2019</div> </div>
Q22	<p>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.</p> <p>The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entries 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.</p>


	<p>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.</p> <p>Now Mrs. Geeta wants to file a suit of fraud against the seller alleging his of selling mix of goods 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?</p> <p>What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?</p>
	<div style="text-align: center;">  </div>
Ans:	<p>In a contract of sale by sample, there is an implied condition that.</p>
(a)	<p>The bulk shall correspond with the sample in quality.</p>
(b)	<p>The buyer shall have a reasonable opportunity of comparing the bulk with the sample.</p>
(c)	<p>The goods shall be free of any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defect, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.</p>
	<p>In the given case: - Mrs. Geeta casually examined the sample and did not notice that sample contained mix of long and short grains. Hence, Mrs. Geeta cannot avoid the contract and will not be successful in the suit. However if the buyer had specified her exact requirements, then seller must supply such goods which are reasonably fit for the given purpose.</p>
	<div style="text-align: center;"> <div>RTP</div> </div>


Q23	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.
Ans:	<p>Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:</p> <p>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.</p> <p>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:</p> <p>(a) The buyer should have made known to the seller the particular purpose for which goods are required.</p> <p>(b) The buyer should rely on the skill and judgement of the seller.</p> <p>(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.</p> <p>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.</p> <p>Hence, TK cannot reject the timber.</p> <p>Alternatively, the above answer can also be provided as under:</p> <p>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</p>








DEC- 2021

	<p>the description of goods.</p> <p>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.</p> <p>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.</p>
Q24	<p>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.</p> <p>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:</p>

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.	
Ans:		
1.	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.	
2.	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.	
3.	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.	
4.	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.	
5.	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.	
NOV - 2022		
Q25	Mr. Dheeraj was running a shop selling good quality washing machines. Mr. Vishal came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Dheeraj showed him a particular machine which Mr. Vishal liked and paid for it. Later on, when the machine was delivered at Mr. Vishal's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Dheeraj about the delivery of wrong machine. Mr. Dheeraj 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. Dheeraj is right in refusing to exchange the washing machine?	
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.	
1.	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.	
2.	In the given case, Mr. Vishal has informed Mr. Dheeraj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine.	
	Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vishal can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Dheeraj to replace the washing machine with desired one.	
MTP		

Q1	State with reason whether the following statement is correct or incorrect:
(a)	"In a sale, the property of the goods is transferred from seller to the buyer in case of generic (unascertained) goods."
Ans:	The Statement is Incorrect: Where there is a contract for the sale of unascertained (generic) goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.
	 <div>NOV- 1994</div>
(b)	"To A railway receipt is not a document of title"
Ans:	The Statement is Incorrect: According to Section 2(4) of the sale of Goods Act, A railway receipt is a "document of title" and it enables the consignee to give a valid discharge in respect of the goods to which he relates.
	 <div>NOV- 1996</div>
(c)	"The seller of the goods is bound to deliver the goods whether the buyer has applied for delivery or not"
Ans:	The Statement is Incorrect: Apart from any express contract, the seller of goods is not bound to deliver the goods until and unless the buyer applies for delivery of the goods
	 <div>MAY- 2001</div>
(d)	"In a Sale on Approval, the property in goods passes to the buyer on the delivery of the goods"
Ans:	The Statement is Incorrect: According to Section 24(1) of the Sale of Goods Act, 1930, the property passes only when he signifies his approval or Acceptance to seller or does any other act adopting the transaction.
	 <div>NOV- 2001</div>

Q2	"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.
Ans:	Exceptions to the Rule "Nemo Dat Quod Non Habet": The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:
(i)	Effect of Estoppel (Section 27) : Where the owner is stopped 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.
(ii)	Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods or 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.
(iii)	Sale by one of the joint owners: If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)
(iv)	Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by 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).		
(v)	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 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. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]	Q3	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 Rs. 50, 000. The agent sells the car for Rs. 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.
(vi)	Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of 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 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)]	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:
(vii)	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)]	(1)	The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
(viii)	Sale under the provisions of other Acts:	(2)	The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
	(a) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.	(3)	The buyer should act in good faith.
	(b) Purchase of goods from a finder of goods will get a valid title under circumstances.	(4)	The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.
	(c) Sale by a pawnee under default of pawnor will give valid title to the purchaser.		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.
		Q4	Mr. S agreed to purchase 100 bales of cotton from V, 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?

RTP

ICAI STUDY MAT.



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 buyers, 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 provide 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. S 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.
(i)	Where the bales have been selected with the consent of the buyer's representatives: In this case 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. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.
(ii)	Where the bales have not been selected with the representatives: In this case, the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely.

RTP

Q5	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?
Ans:	As per the provisions of Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval "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:
(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.

RTP

(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.

Q6 Mr. S agreed to purchase 100 bales of cotton from V, 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?

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 provide 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. S has the right to select the goods 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.

(i) 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. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

(ii) 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. V completely.

ICAI STUDY MAT.

Q7 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 Rs. 50, 000. The agent sells the car for Rs. 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.



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 mercantile agent.	RTP
(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.	
Q8	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.	
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-	QR
(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.	
		ICAI STUDY MAT.
Q9	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.	QR
Ans:		
(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.	
		MTP / RTP

73

Q12	Explain the law relating to passing of risk in case of the sale of goods.
Ans:	<u>Passing of the risk in the property to the buyer of goods:</u>
(i)	The general rule is, "Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, after that event they are at buyers risk, whether delivery has been made or not.
(ii)	If delivery has been delayed through the fault of either buyer or seller, the goods shall be at the risk of the party in default.
(iii)	Duties and liabilities of seller or buyer as bailee of goods for otherparty remain unaffected even when the risk has passed generally.
NOV -1996/ MAY-1999/ MAY 2001	
Q13	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?
Ans:	<u>Payment and Delivery are Concurrent Condition (Section 32) :</u>
(i)	Unless otherwise agreed, delivery of goods and payment of price are concurrent conditions.
(ii)	The seller shall be ready and willing to give to possession and the buyer shall be ready and willing to pay the price, in exchange of goods.
	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, 150 tons 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.
	<u>The wheat which was put in the sacks fulfils both the conditions that are:-</u>
(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.

Q14 "Delivery of the goods and payment of the price are concurrent conditions"? Enumerate?

Ans: The section says that unless otherwise agreed the delivery of the goods and payment of the price are concurrent conditions that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of goods.

The general rule is that the obligations of the seller to deliver and that of the buyer to pay are implied concurrent conditions in the nature of mutual conditions precedent, and that neither can enforce that contract against the other without showing performance or offering to perform of averring readiness and willingness to perform his own promise.

This section lays down the rule as regards what are known as reciprocal promises to be simultaneously performed. In such a case no promisor need perform his promise unless the promise is ready and willing to perform his reciprocal promise.

NOV- 1997

Q15 When the property in the goods passes to the buyer in case of the delivery of the goods to the buyer on approval basis?

Ans: When goods are delivered to the buyer on approval or other similar terms, the property therein passes to the buyer :

1. When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction, or
2. If he does not signify his approval or acceptance to the seller, but retain the goods without giving notice of rejection then if a time has been fixed for the return of the goods on expiration of such time. If no time has been fixed on expiration of reasonable time.

3. He does something to the good, which is equivalent to accepting the goods .

NOV -1998/ MAY-2001/ 2002

Q.16 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?

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 tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

ICAI STUDY MAT.

Q17 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?

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.

ICAI STUDY MAT.

Q18 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 Sales of Goods Act 1930?

Ans: Subject to provision of the act and any other law for time being in force where goods are sold by person who is not the owner thereof and who does not sell them under authority or with consent of owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller authority to sell.

1. The general rule regarding the transfer of title is seller cannot transfer to buyer of goods a better title than he himself has.
2. If seller is not owner of goods then buyer will not become the owner this rule is expressed in Latin Maxim "Nemo dat quod non habet" which means that no one can give what he has not got.

JUNE- 2019 / NOV-2020

Q19	<i>Mr. D sold some goods to Mr. E for ₹ 10,00,000 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.</i>
Ans:	<i>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 a 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. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.</i> <i>Thus, in the given case, Mr. D can recover damages from Mr. E and can repudiate the contract as well.</i>
MAY- 2018	
Q20	<i>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, '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.</i> <i>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 damages. Will your answer be different if the dues were not settled in case and still pending?</i>
Ans:	<i>According to the facts of this case it stands pretty much clear to the judgment of an independent observer that the property in the goods sold by Mr. G had already passed to Mr. H after the payment of dues and the</i>



examination of goods by the agent of Mr. H. Hence it can be easily concluded that the liability for damage suffered by the goods would fall on the buyer i.e. Mr. H and not Mr. G since the transfer of title of the goods had already taken place before the damage occurred.

NOV- 2018

Q21	<i>State the various essential elements involved in the sale of unascertained goods and its appropriation as per the sale of Goods Act, 1930.</i>
Ans:	
(a)	<i>There is a contract for the sale of unascertained or future goods</i>
(b)	<i>The goods should conform to the description and quality stated in contract.</i>
(c)	<i>The goods must be in a deliverable state.</i>
(d)	<i>The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.</i>
(e)	<i>The appropriation must be made by:</i> <i>(i) The seller with the assent of the buyer, or</i> <i>(ii) The buyer with the assent of the seller</i>
(f)	<i>The assent may be express or implied.</i>
(g)	<i>The assent may be given either before or after appropriation.</i>
MAY-2018 / NOV - 2019	
Q22	<i>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>
(i)	<i>Examine with reference to the provisions of the sale of Goods Act, 1930, what recourse is available to Ms. R?</i>
(ii)	<i>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?</i>



Ans:	When the goods are delivered to the buyer on approval or on sale or return basis or other similar terms the property there in passes to the buyer.
(a)	When he 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 on the expiration of such time, if no time has been fixed, then on the expiration of the reasonable time.
(c)	He does something to the goods which is equivalent to accepting the goods. But sometimes, it may be noted that where goods have been delivered by a person on 'Sale or return' on the terms that the goods well to remain the property of the sellers till they are paid for, the property therein does not pass to the buyer until the terms are complied with i.e. cash in paid for
	In the given case Mr. R Owns a two-wheeler which she handed over to her friend MSK on sale or return basis. After a week MSK neither returned the vehicle nor made payment for it. She instead pledge the vehicle to Mrs. A to obtain a loan.
(i)	Thus, according to this case Mr. R has no right against Mr. A. He can only recover the price of the two wheeler from Mr. K.
(ii)	Yes, my answer will be different if it had been expressly provided that the vehicle would remain the property of Mr. R until the price has been paid then it says that at the time of pledge the ownership was not transferred to Mr. K. Thus, the pledge was not valid and R can recover from the two wheeler from A as well.
Q.23	Mr. I was a retail 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

NOV- 2020

	contract was complete after the delivery of the fan and payment of price.
(i)	Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?
(ii)	What is the remedy available to Mr. M?
Ans:	Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans."
	The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
	Here in the given problem, Mr. M went to Mr. T's shop and asked for exhaust fan and approved a particular brand and paid for it. The fan which was delivered at M's house was a table fan. So, he asked Mr. T to exchange the same but Mr. T refused to do so.
	Conclusion: Applying the above legal provision is the given problem we can conclude as follows:
(1)	Mr. T is not right he can't refuse to exchange the fan as the goods are not according to description. Buyer has asked for exhaust fan and seller has supplied table fan condition as to description is breached.
(2)	Remedy available to Mr. M- Mr. M can repudiate / rescind the contract i.e. he can return the table fan and ask for damages or both.
Q24	Avyukt purchased 100 Kgs of wheat from Bhaskar at 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.

JAN- 2021



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.
	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.



JUN- 2023

Q25	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?
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Ans:	As per the Proviso to Section 27 of the Sale of Goods Act, 1930, a sale made by a mercantile agent of the 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.
	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.

JUN- 2023

Q26	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?
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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.

MTP

Q1	State with reasons whether the following statement is Correct or Incorrect:
(a)	An unpaid seller who is in possession of goods sold, can exercise the right of lien even when the property has passed to the buyer
Ans:	The Statement is Correct: According to Sec. 47(2) of the Sale of Goods Act, the seller may exercise his right of lien notwithstanding that he is in possession of goods as agent or bailee of the buyer. Hence Unpaid Seller can exercise right of Lien even when the buyer is the owner of the goods.
	NOV- 1999
(b)	(i) A seller can never bid at an auction sale. (ii) An unpaid seller can exercise the right of stoppage of goods in transit if the buyer becomes insolvent.
Ans:	The Statement is Incorrect: Right to bid may be reserved expressly by or on behalf of seller and where such right is expressly reserved, the seller or any person on his behalf may bid at auction.
(i)	The statement is Correct: when the buyer of goods becomes insolvent the unpaid seller who has parted with possession of goods, he has a right of stopping them in transit.
	MAY- 1995
(c)	When goods are delivered to the buyer and he refuses to accept them, he is not bound to return the goods to the seller.
Ans:	The statement is Correct: Section 43 of the Sale of Goods Act clearly provides that where goods are delivered to the buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient to intimate to the seller that he refuses to accept them.
	NOV- 1996

(d)	"The right of lien by an unpaid seller can be exercised for the nonpayment of price of goods and other charges"
Ans:	Incorrect: The unpaid seller is given right of lien' over the goods, only in case of non-receipt of the price of goods and not for any other charges.
	MAY- 1997
(e)	(i) In an auction sale, goods to be auctioned can be put for sale in lots. (ii) Right of lien' and right to stoppage the goods in transit may be exercised simultaneously by an unpaid seller.
Ans:	The statement is Correct: Section 64 of the Sale of Goods Act, 1932 provides that in the auction sale where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
(ii)	The Statement is Incorrect: Right of lien is exercisable as long as the seller is in possession of goods, whereas right of Stoppage in transit is exercisable as long as the goods are passing through channels of communication for the purpose of reaching in the hands of the vendor.
	NOV- 1997
(f)	(i) After completion of the sale in an auction, the property in the goods and the risk of the loss caused in an accident to the auctioned property therein, is transferred to the bidder. (ii) Where the goods are of perishable nature the unpaid seller re-sell the goods without any notice to the buyer.
Ans:	The statement is Correct: Section 26 of the Sale of Goods Act, 1930 lays down that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer. When property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Therefore, the property in the

	goods and risk of loss thereof has been passed to the bidder and the buyer has to bear the loss.		
(ii)	The Statement is Incorrect: According to Section 53(2) and (3) of the sale of Goods Act, 1930, a unpaid seller should give a notice to the buyer of his intention to re-sell the goods. However, in respect of perishable goods no such notice appears to be compulsory.	MAY- 1998	
(g)	"In an auction sale, seller or any other person on his behalf may bid at the auction"		
Ans:	Correct: A bid can be made provided such a right is expressly reserved by the seller. According to Section 64(3) of the Sale Of Goods Act, 1930, in the case of a sale by auction, a right of bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions herein after contained bid at the auction.		
		NOV- 1998	
(h)	"Right of lien is linked with the possession of goods"		
Ans:	Correct: The unpaid seller has a lien on the goods, for the price, while he is in possession of goods, until the payment or the tender of the price. A lien is a right to retain possession of goods, until payment of the price.		
		MAY- 2000	
(i)	"In an auction sale, a bid once made cannot be withdrawn by the bidder"		
Ans:	Incorrect: The bidder can withdraw his bid any time before the fall of the hammer i.e. Completion of sale.	NOV- 2000	
(j)	"A seller of goods shall be called an 'Unpaid seller' even when a part payment of the price of goods sold has been made to him by a buyer"		
Ans:	Correct: According to Section 45 (1) of Sale of Goods Act, 1930 a seller of goods is deemed to be an unpaid seller when the whole of the price has not been paid. Hence to seller shall be called an unpaid seller even when a part payment of the price of goods has been made.	MAY- 2002	
(k)	"In an auction sale, seller or any other person on his behalf may bid at the auction, if such a right is expressly reserved"		
Ans:	Correct: According to Section 4(3) of the Sale Of Goods Act, 1930 in an Agreement to sell the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled. Hence the property in the goods does not pass to the buyer immediately.		
		NOV- 2002	
Q2	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?		
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.		

ICAI STUDY MAT.

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- RTP



(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 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.
<div style="background-color: #800000; color: white; padding: 5px; display: inline-block;">ICAI STUDY MAT.</div>	
Q5	Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 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.
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,



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	Suraj is also entitled to:-
	(1) Interest on the remaining amount
	(2) Interest during the pendency of the suit.
	(3) Costs of the proceedings.
Q6	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. Can Ram exercise right of stopping the goods in transit?
Ans:	Right of stoppage of goods in transit: The Case Discussed 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.
Q7	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?
Ans:	By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in

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ICAI STUDY MAT.

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.



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Q8 Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 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. Advice Suraj as to what remedy is available to him against Sohan.

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.

(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.

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.



ICAI STUDY MAT.

Q9 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?

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 Sales 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.

ICAI STUDY MAT.

Q10	Who is an unpaid seller? Discuss briefly his rights under the Sale of Goods Act.	
Ans:	Meaning of an Unpaid Seller The seller of goods is deemed to be an 'Unpaid Seller' when:	
(a)	The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price	
(b)	A bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of dishonor of instrument or otherwise.	
	Rights of an Unpaid Seller:	
(i)	Against Goods :Property in goods has passed to the buyer lien, stoppage in transit resale. Property in goods has not passed to the buyer withholding delivery, lien, stoppage in transit, resale.	
(ii)	Against the Buyer : Suit for price, Suit for damages, Suit for interest.	
	Rights of an unpaid seller against the goods: The unpaid seller has the following rights against the goods	
1.	Right Of Lien (Sec. 47): He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. This right of lien can be exercised by him in the following cases only:	
(a)	Where goods have been sold without any stipulation of credit	
(b)	Where goods have been sold on credit but the term of credit has expired, or	
(c)	Where the buyer becomes insolvent.	

	However, the unpaid seller loses his right of lien under the following circumstances:	
	(i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.	
	(ii) Where the buyer or his agent lawfully obtains possession of the goods.	
	(iii) Where seller has waived the right of lien.	
	(iv) By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist	
2.	Right Of Stoppage in Transit: When the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of goods has the right of dropping them in transit. In other words, seller may resume possession of goods as long as they are in course of transit and may retain them until paid or tendered price of the goods.	
3.	Right of re-sale: In the absence of this right, the unpaid seller other rights against the goods, would not have been much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.	
Q11	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?	
Ans.	The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.	

	<i>This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent.</i>
	<u>The conditions necessary for exercising this right are:-</u>
1.	<i>The buyer has not paid the total price to the seller</i>
2.	<i>The seller has delivered the goods to a carrier thereby losing his right of lien</i>
3.	<i>The buyer has become insolvent</i>
4.	<i>The goods have not reached the buyer, they are in the course of transit.</i>
	<i>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.</i>
	ICAI STUDY MAT.
Q12	<i>J sold a machine to K. K gave a cheque for the payment. The cheque was dishonored. 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 provision of the Sale of Goods Act, 1930?</i>
Ans:	<i>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>

	<i>When the buyer has made the transaction with the consent of the seller</i>
	<i>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</i>
	<i>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.</i>
	ICAI STUDY MAT.
Q13.	<i>Describe the law relating to the "right of resale" available to an unpaid seller in the Sales of Goods Act, 1930.</i>
Ans:	<i>Right of resale: This right of resale available to an unpaid seller may be described as follows:-</i>
1.	<i>Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.</i>
2.	<i>Where he gives notice to the buyer of his intention to re-sell the goods : If after receipt of such notice , the buyer fails within a reasonable time to pay or tender the price the seller may resell the goods.</i>
3.	<i>Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods:The buyer acquires the good title thereof against the original buyer, despite the fact that the notice of resale has not been given by the seller to the original buyer.</i>
4.	<i>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 buyer that in case buyer makes default in payment of the price, the seller will resell the goods to some other person.</i>
	MAY- 1996



(ii)	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.
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Example : “A” of Mumbai sold certain goods to “B” of Delhi. He delivered the goods to “C”, for purpose of transmission of these goods to “B”. Before the goods could reach B, “B” becomes insolvent. “A” can stop the goods in transit by giving a notice to “C”.

Q16	State the provisions given under Sale Of Goods Act relating to "Auction Sale".
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(a)	When goods are sold in lots: When goods are put up for sale in lots, each lot is <i>prima facie</i> deemed to be subject matter of a separate contract of sale.
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(b)	Completion of the Contract of Sale: <u>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.</u>
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(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, the seller or any one person on his behalf may bid at the auction.
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(d)	Where the sale is not notified by the seller :Where the sale is not notified to be subject to the right of the seller 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 and any sale contravening the rule may be treated as fraudulent by the buyer.
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(e)	Reserved Price : The sale may be notified to be subject to a reserve or upset price. Upset Price is the Minimum Price at which seller is willing to sell
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(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.
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May -2000/ Nov-2002/ Jan-2021

Q17 AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Ans: **Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):**
Subject to the provisions of this Act, 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. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer. In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

DEC- 2021



Difference between Partnership and Joint Stock Company

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 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.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
Transfer of shares	A share in a partnership cannot be transferred without the consent of all the partners.	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.

Difference between Partnership and Club

Basis	Partnership	Club
Definition	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
Relationship	Persons forming a partnership are called partners and a partner is an agent for other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
Dissolution	A change in the partners of the firm affects its existence.	A change in the membership of a club does not affect its existence.



Difference between Partnership and Hindu Undivided Family

<i>Basis</i>	<i>Partnership</i>	<i>Hindu Undivided Family</i>
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 coparceners 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.


Difference between Partnership and Co-ownership

Basis	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 losses must have to be shared.	Co-ownership does not necessarily involve sharing of 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.

Difference between Partnership and Association

Basis	Partnership	Association
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.	Association evolves out of social cause and there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
Examples	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.

Q1.	Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? Also, give list of information to be included in partnership deed?	
ANS:	Ms. Lucy while drafting partnership deed must take care of following important points:	
	<ul style="list-style-type: none"> 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 <u>Partnership Deed</u>. 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. 	
	<u>List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:</u>	
	<ul style="list-style-type: none"> 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. 	

	<ul style="list-style-type: none"> Provisions for expulsion of a partner in case of gross breach of duty or fraud. 	
	Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.	
		ICAI STUDY MAT.
Q2.	What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.	
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.	
		MTP / MAY-2018

Q3.	<i>"Sharing in the profits is not conclusive evidence in the creation of partnership". Comment.</i>		Q4.	<i>What is Particular Partnership as per Indian Partnership Act, 1932?</i>
ANS:	<i>"Sharing in the profits is not conclusive evidence in the creation of partnership".</i>		ANS:	<i>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.</i>
	<i>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.</i>			JAN - 2021
	<i>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.</i>		Q5.	<i>Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.</i>
	<i>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.</i>		ANS:	<i>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:</i>
	<i>Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.</i>	MTP / NOV-1995	1.	<i>Association of two or more persons</i>
			2.	<i>Agreement</i>
			3.	<i>Business</i>
			4.	<i>Agreement to share Profits</i>
			5.	<i>Business carried on by all or any of them acting for all</i>
				ELEMENTS OF PARTNERSHIP <i>The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:</i>
			1.	<i>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</i>



	be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership. The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.		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 partners.
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: In this context, we will consider two propositions. First, 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		
		Q6.	
		(i)	What do you mean by Partnership for a fixed period as per the Indian Partnership Act, 1932?
		(ii)	Can a minor become a partner in a partnership firm? Justify your answer
		ANS:	
		(i)	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.
		(ii)	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.
		Q7.	Explain the provisions relating to the creation of partnership by holding out.
		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



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	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.
	11. As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time
	RTP
Q8.	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. Advice Z whether he can recover the amount from X and A under the Indian Partnership Act, 1932
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
	RTP/ICAI STUDY MAT
Q9.	Explain the following kinds of partnership under the Indian Partnership Act, 1932:
(i)	Partnership at will
(ii)	Particular partnership
ANS:	
(i)	Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when: 1. no fixed period has been agreed upon for the duration of the partnership; and 2. there is no provision made as to the determination of the partnership.
	These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will. Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will. A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.
(ii)	Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business.

NOV - 2020



	Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called <i>particular partnership</i> . A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking. 17. "Partner indeed virtually embraces the character of both a principal and an agent"	
Q10.	"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.	
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.	
Q11.	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?	
ANS:	Nominal Partner is a partner only in name. The person 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.	
		

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Q1.	With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner?		(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.
ANS:	Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):			In the instant case, Mr. Vikas can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.
(i)	The insolvent partner cannot be continued as a partner.		(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.
(ii)	He will be ceased to be a partner from the very date on which the order of adjudication is made.			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.
(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.			
		RTP		
Q2.	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.		Q3.	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:
ANS:			(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?
			ANS.	As per the provisions of Section 30(5) of the Indian Partnership Act,

RTP




	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.
ICAI STUDY MAT.	
Q4	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
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.
RTP	
Q5	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



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<p>(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.</p> <p>In the given scenario, Mr. 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 ` 200 per Kg. Hence, he made an extra profit of ` 150 per Kg. This is arising purely out of transactions with the firm. Hence, Mr. B is accountable to the firm for the extra profit earned thereby.</p> <div data-bbox="577 496 842 587">RTP</div> 	<p>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 the cases.</p> <div data-bbox="1682 252 1946 343">RTP</div> 
<p>Q8 Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.</p> <p>ANS: <u>Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-</u></p> <p>(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or</p> <p>(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss</p> <p>Analysis of section 27: It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly 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</p>	<p>Q9 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?</p> <p>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.</p> <p>(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</p> <p>(ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.</p> <p>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:</p> <p>(i) the 20% shares of profits (as per the partnership deed); or</p> <p>(ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.</p> <div data-bbox="1547 1273 1899 1364">ICAI STUDY MAT.</div> 

Q10	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
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. S 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.

JUNE 23



Q11	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?
ANS:	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. Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.
Q12	"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership." (a) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. (b) State the liabilities of a minor partner both:

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ICAI STUDY MAT/MTP



ANS:

(a) Rights which can be enjoyed by a minor partner:

- (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.

(b) (1) 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.

Q13

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 sell 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 was continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but couldn't 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?

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, due to some emergency, A sold the stock at lower price to save the firm from loss. A couldn't contact B as he was on foreign trip.

Hence, 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.



MTP



Difference between Dissolution of Firm and Dissolution of Partnership

<i>Basis</i>	<i>Dissolution of Firm</i>	<i>Dissolution of Partnership</i>
<i>Continuation of business</i>	<i>It involves discontinuation of business in partnership.</i>	<i>It does not affect continuation of business. It involves only reconstitution of the firm.</i>
<i>Winding up</i>	<i>It involves winding up of the firm and requires realization of assets and settlement of liabilities.</i>	<i>It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.</i>
<i>Order of court</i>	<i>A firm may be dissolved by the order of the court.</i>	<i>Dissolution of partnership is not ordered by the court.</i>
<i>Scope</i>	<i>It necessarily involves dissolution of partnership.</i>	<i>It may or may not involve dissolution of firm.</i>
<i>Final closure of books</i>	<i>It involves final closure of books of the firm.</i>	<i>It does not involve final closure of the books of the firm.</i>








Q1	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?	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.
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.	 <div>RTP</div>
Q2	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?	Q3
ANS:	<u>Compulsory dissolution of a firm (Section 41)</u> 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	<p>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;</p> <p>(a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?</p> <p>(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?</p> <p>(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?</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.</p>  <div>RTP</div>

Q4	"Indian Partnership Act does not make the registration of firms 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?	(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.
ANS:	It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. Following are consequences of Non-registration of Partnership Firms in India: 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, nonregistration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. 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. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.	(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.
(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.	(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.
(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.	(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

ICAI STUDY MAT.



77

Q1.	What is Law?	
Ans:	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.	SPQ
Q2.	What are the sources of Law?	
Ans:	The main sources of law in India are the <ul style="list-style-type: none"> Constitution, The statutes or laws made by Parliament and State Assemblies, Precedents or the Judicial Decisions of various Courts and in some cases, established Customs and Usages. 	SPQ
Q3.	What is the process of making Law?	
Ans:	Process of making Law <ul style="list-style-type: none"> Law is proposed in parliament it is called a Bill. After discussion and debate, the law is passed in Lok Sabha. Thereafter, it has to be passed in Rajya Sabha. It then has to obtain the assent of the President of India. Finally, the law will be notified by the Government in the publication called the Official Gazette of India. The law will become applicable from the date mentioned in the notification as the effective date. Once it is notified and effective, it is called an Act of Parliament. 	SPQ


Q4.	To whom Law making power has been given by Constitution of India?	
ANS:	People who wrote the Constitution of India decided to divide the Law making power between: Central Government and State Government	SPQ
Q5.	Classify law in Indian Legal system?	
ANS:	<div> <div>CRIMINAL LAW</div> <ul style="list-style-type: none"> Criminal law is concerned with laws pertaining to violations of Rules of law or Public wrong and punishment for same It is governed by Indian Penal Code and Code of Criminal Procedures Examples: Murder, Theft, Fraud </div> <div> <div>CIVIL LAW</div> <ul style="list-style-type: none"> It focus on dispute resolution rather than punishment It is governed by Code of Civil Procedure It is classified into : Law of Contract, Family Law, Property Law, Law of Tort </div> <div> <div>COMMON LAW</div> <ul style="list-style-type: none"> Judicial Precedent or Case Law is Common Law Doctrine of Stare Decisis: "To stand by that which is decided" It reinforces the court to follow same judgement/principle established by previous decisions , where facts are similar. </div> <div> <div>PRINCIPLES OF NATURAL JUSTICE</div> <ul style="list-style-type: none"> Natural Justice also know as Jus Naturals deals with certain fundamentals of justice going beyond written law. Nemo Judex in causa sua : no one should be made judge in own case and its a rule against prejudice Audi Alteram Partem: hear the other party or give other party a fair hearing </div>	SPQ

Q6.	Name the regulatory bodies enforcing the Law in India?	
ANS:	The regulatory bodies enforcing the Law in India are:	
	1. Ministry of Finance	
	2. Ministry of corporate Affairs (MCA)	
	3. Ministry of home affairs	
	4. Securities Exchange Board of India (SEBI)	
	5. Reserve Bank of India (RBI)	
	6. Insolvency and Bankruptcy Board (IBBI)	
	7. Ministry of Law and Justice	

SPQ

Q7.	What are the primary responsibilities and functions of a Ministry of Finance as outlined in a country's constitution?	
Ans:	The Ministry of Finance (VittaMantralaya) is a Ministry within the Government of India concerned With The Economy Of India, serving As The Treasury Of India.	
	It concerns itself With taxation, financial legislation, financial institutions, capital markets, central and state finances, and the Union Budget.	
	One of the important functions of the Finance Ministry is the presentation of the Union Budget.	


SPQ

Q8.	What specific departments or divisions fall under the purview of the Ministry of Finance as established by the constitution?	
Ans:	<u>Departments under the Ministry of Finance-</u>	
	a) Department of Economic Affairs	
	b) Department of Expenditure	
	c) Department of Revenue	
	d) Department of Financial Services	
	e) Department of Investment and Public Asset Management	
	f) Department of Public Enterprises	





SPQ




Q9.	Ministry of Corporate affairs administer which acts and by whom it is run?	
Ans:	<u>Ministry of corporate affairs</u>	
	• It is an Indian Government Ministry.	
	• 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.	
	• Responsible mainly for the regulation of Indian enterprises in the industrial and services sector.	
	• The Ministry is mostly run by civil servants of the ICL Scadre.	
	• 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.	

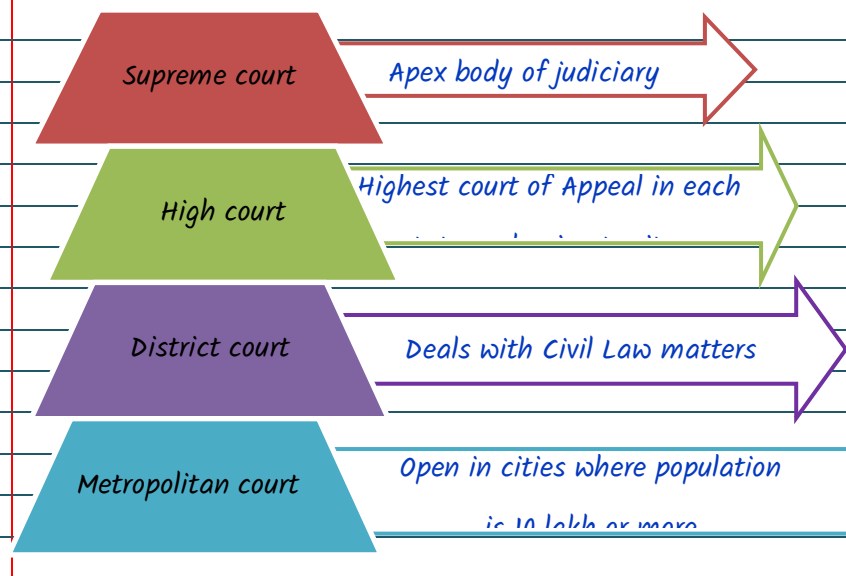
SPQ

Q10.	What specific departments or divisions fall under the purview of the Ministry of Home affairs?	
Ans:	<u>Ministry of Home Affairs (GṛhaMantralaya)</u>	
	• 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.	
	<u>Departments of Ministry of Home Affairs</u>	
	a) Department of Border Management	
	b) Department of Internal Security	
	c) Department of Home	
	d) Department of Official Language	
	e) Department of States	
	f) Department of Jammu, Kashmir and Ladakh Affairs	

SPQ

Q11.	Can you provide an overview of the Ministry of Law and Justice's mandate and its scope of operations based on constitutional provisions?	
Ans:	<u>Ministry of Law and Justice</u>	
	<ul style="list-style-type: none"> In the Government of India is a Cabinet Ministry deals with the <ul style="list-style-type: none"> ➤ Management of the legal affairs, through the Legislative Department ➤ Legislative activities through the Department of Legal Affairs ➤ Administration of justice in India through the Department of Justice 	
	<u>Departments of Ministry of Law and Justice</u>	
	<ul style="list-style-type: none"> Department of Legal Affairs Legislative Department Department of Justice 	
Q12.	Can you provide an overview of the RBI's mandate and its scope of operations based on constitutional provisions?	
ANS:	<u>Reserve Bank of India</u>	
	<ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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 specialized 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). 	

Q13.	Can you provide an overview of IBBI's mandate and its scope of operations based on constitutional provisions?	
ANS:	<u>Insolvency and Bankruptcy Board of India (IBBI)-</u>	
	<ul style="list-style-type: none"> 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. 	
Q14.	How is the Indian judiciary organized at different levels, and what are the key components of this structure?	
ANS:	<p>When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.</p> <p>The functions of judiciary system of India are:</p> <ul style="list-style-type: none"> Regulation of the interpretation of the Acts and Codes, Dispute Resolution, Promotion of fairness among the citizens of the land. <p>In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District Courts.</p>	



SPQ





VIDHYODAY
VIDHYA KA UDAY

SPACE FOR NOTES



Difference between promissory note and bill of exchange

	Basis	Promissory Note	Bills 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 (ii) the payee	In a bill of exchange, there are 3 parties which are as under: (i) the drawer (ii) the drawee (iii) 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.

Q1.	What are the essential characteristics of Negotiable Instruments?		debt is insufficient.
ANS:	<u>Essential Characteristics of Negotiable Instruments</u>		<ul style="list-style-type: none"> The promise to pay should be definite and unconditional A promissory note must be signed by the maker otherwise it is incomplete and ineffective.
	<ul style="list-style-type: none"> It is necessarily in writing. It should be signed. It is freely transferable from one person to another. Holder's title is free from defects. It can be transferred any number of time still its satisfaction. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only. The sum payable, the time of payment, the payee, must be certain. The instrument should be delivered. Mere drawing of instrument does not create liability. 	SPQ	<ul style="list-style-type: none"> Promise to pay money only. Promise to pay a certain sum. The maker and payee must be certain, definite and different persons. A promissory note cannot be made payable to the bearer [Section 31 of the Bank of India Act, 1934 (RBI Act)]. Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'. Stamping: A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials on such stamp or otherwise.
Q2.	Who are the parties to a bill of exchange?		
ANS:	<u>Parties to the bill of exchange</u>	SPQ	Q4. Who are parties to a cheque?
	Drawer: The maker of a bill of exchange.		ANS: Drawer: The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
	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.		Drawee: The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
	Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.		"drawee in case of need"—When in the bill or in any indorsement thereon, the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".
Q3.	What are the essential characteristics of Promissory Note?		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.
ANS:	<u>Essential Characteristics of a Promissory Note</u>		SPQ
	<ul style="list-style-type: none"> In writing—An oral promise to pay is not sufficient. There must be an express promise to pay. Mere acknowledgment of 		



		Q6. Explain what is 'presentment for acceptance', as per the provisions of the Negotiable Instruments Act, 1881
	<p style="text-align: center;">Cheque</p> <pre> graph TD C[Cheque] --> M[Person who is a maker] C --> D[Person who is directed to pay] C --> F[Person in whose favour issued] M --> DR[Drawer] D --> DW[Drawee] F --> PY[Payee] DR --> DW DW --> PY </pre>	<p>ANS: <u>Presentment for acceptance [Section 61]</u></p> <p>A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.</p> <p>In default of such presentment, no party there to is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.</p>
Q5.	Explain the meaning of 'Negotiation by delivery' with the help of an example. Give your answer as per the provisions of the Negotiable Instruments Act, 1881.	<p>If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.</p>
ANS:	<p><u>Negotiation by delivery [Section 47]</u></p> <p>Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.</p> <p>Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.</p>	<p>Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.</p>
	<p>Example:</p> <p>A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.</p>	<p>Q7. State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881:</p> <ol style="list-style-type: none"> 1. Ram draws a bill of exchange in Delhi upon Shyam a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance. 2. Ramesh draws a bill of exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight. 3. Ajay draws a bill of exchange in California upon Vijay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance. 4. Mukesh draws a bill of exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance.

Ans.	“Inland instrument” and “Foreign instrument” [Sections 11 & 12 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. Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.	ANS:	Provision: Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note 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.
	Following are the answers as to the nature of the Instruments:		Facts of case: In the above case Manoj draws a promissory note in favour of Umesh cuts it into half and delivers it to Umesh. He cuts the note into half and sends one of it to Umesh. Later he asks Umesh to return it back and on the other hand Umesh asks for the other piece. As delivery of half of the instrument is not a delivery is not the delivery of the instrument the transfer of a part of the instrument shall not be treated as delivery.
	1. In first case, Bill is drawn in Delhi by Ram on a person (Shyam), a resident of Jaipur (though accepted to be payable in Thailand after 90 days) is an Inland instrument.		Conclusion: So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him.
	2. In second case, Ramesh draws a bill in Mumbai on Suresh resident of Australia and accepted to be payable in Chennai after 30 days of sight, is an Inland instrument.		
	3. In third case, Ajay draws a bill in California (which is situated outside India) and accepted to be payable in India (Kanpur), drawn upon Vijay, a person resident in India (Jodhpur), therefore the Instrument is a Foreign instrument.		
	4. In fourth case, the said instrument is a Foreign instrument as the bill is drawn in India by Mukesh upon Dinesh, the person resident outside India (China) and also payable outside India (China) after 45 days of acceptance.		
		Q9.	Explain the modes of Negotiations in instruments, as per the provisions of the Negotiable Instruments Act, 1881.
		Ans:	MODES OF NEGOTIATION
			A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.
			A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.
			Negotiation by delivery [Section 47]
			Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.
			Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.
Q8.	Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.		

RTP

MTP



	Negotiation by indorsement[Section48]	Q11.	Classify Negotiable Instruments on following basis:	SPQ
	Subject to the provisions of section58, a promissory note, bill of exchange or cheque Payable to order, is negotiable by the holder by indorsement and delivery thereof.		a) "Bearer instrument " and "order instrument"	
			b) Inchoate and Ambiguous instruments	
		Ans:	a) Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words "or bearer" or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.	
		RTP		
Q10.	Explain what is 'presentment for payment', as per the provisions of the Negotiable Instruments Act, 1881.		Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.	
Ans:	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 herein after provided.			
	In default of such presentment, the other parties there to are not liable there on to such holder.			
	Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.		(b) 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 a power to its holder to make it complete by writing any amount either within limits specified there in or within the limits specified by the stamp's affixed on it.	
	Exception: 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.			
	Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:		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 thence forward treated accordingly.	
	Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made 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 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 there after be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.	
		SPQ		

<p>Q12. M drew a cheque amounting to ₹ 2lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?</p>	<p>first half sent by him. He can change his mind and refuse to send the other half of the P/N.</p>
<p>Ans: Provision: Negotiation by indorsement [Section 48] : Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.</p> <p>FACTS OF CASE: M drew cheque payable to N and delivered to him and further N indorsed it to C which kept in safe locker. Later P found it in safe locker after the death of N.</p> <p>CONCLUSION: No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)</p>	<p>Q14. 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.</p> <p>Ans: The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of 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.</p>
<p>Q13. 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 the 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.</p>	<p>Q15. Anjum drew a cheque for ₹20,000 payable to 'Babloo' and delivered it to him. 'Babloo' indorsed the cheque in favour of 'Rehansh' but kept it in his table drawer. Subsequently, 'Babloo' died, and cheque was found by 'Rehansh' in 'Babloo's table drawer. 'Rehansh' filed the suit for the recovery of cheque.</p>
<p>Ans: Provision: 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.</p> <p>FACTS OF CASE: M makes promissory note to N and he cuts the note in half for safety of transmission. He then call backs half note from N.</p> <p>CONCLUSION: 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</p>	<p>Whether 'Rehansh' can recover cheque under the provisions of the Negotiable Instrument Act 1881?</p> <p>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.</p> <p>The contract on a negotiable instrument until delivery remains incomplete and revocable. The 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</p>



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 given case, cheque was indorsed properly but not delivered to indorsee i.e. 'Rehansh', Therefore, 'Rehansh' is not eligible to claim the payment of cheque.

RTP





Difference between LLP and firm

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	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.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s)	The death, insanity, retirement or insolvency of the partner(s)
7.	Name	Name of the LLP to contain the word limited liability partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner is limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
9.	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.
10.	Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.

12.	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.
13.	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.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.


Difference between LLP and Limited Liability Company





	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	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.
3.	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).
4.	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.
5.	No. members/partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners 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.



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Q1	Enumerate the various characteristics of the LLP?	
ANS:		
1.	Body Corporate	
2	Perpetual Succession	
3	Separate legal entity	
4	Mutual Agency	
5	LLP Agreement	
6	Artificial Legal person	
7	Common Seal	
8	Limited liability	
9	Management of business	
10	Minimum and maximum number of partners	
11	Business for profit only	
12	Investigation	
13	Compromise or Arrangement	
14	Conversion into LLP	
15	E-Filing of documents	
16	Foreign LLPs	
Q2	"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.	
ANS:	1. LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership	
	2. 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 partners will be limited to their agreed contribution in the LLP, while the liability of the LLP itself will be liable for the full extent of its assets.	
	3. 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.	

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4.	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.	
Q3	Explain Small Limited Liability partnership under LLP Act, 2008?	
ANS:	Small Limited Liability Partnership [Section 2 (1)(ta)] :	
	It means a limited liability partnership —	
a)	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	
b)	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	
c)	which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.	
Q4.	X, Y and Z have recently completed their Graduation from different streams and wanted to start a business with capital of Rs. 5, 00,000 each. X and Y are in favour to start with a private limited company but Z wants to form a Partnership firm. They approached a friend to solve dispute between them and choose between company and partnership firm. He advises them to commence the business with LLP which is the hybrid of company and partnership firm. Sostate some merit points of LLP?	

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RTP

Ans:	Advantages to form LLP are:
	<ul style="list-style-type: none"> is organized and operates on the basis of an agreement provides flexibility without imposing detailed legal and procedural requirements. Easy to form All partners enjoy limited liability Flexible capital structure Easy to dissolve



SPQ

Q5 List out the documents that need to be filed at the time of incorporation of LLP?

ANS:	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.



SPQ

Q6 A, B, and C are the partners in a LLP having a registered office in Pune and place of business in Mumbai. Now they wanted to change their registered office to Mumbai from Pune. Mr. A in his opinion said that they cannot change their Registered office as they inform Pune as their

registered office at the time of incorporation. Mr. B in his opinion said that they can change their registered office by changing the address in website and all the legal papers without filing notice to registrar. Mr. C is confused with the opinion of both of them and concerned with the penal provisions of the act. You are called to advise them.

Ans: **Provision: Change in registered office therein (Section13):**

- A LLP may change the place of its registered office and file the notice of such changewith 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.
- 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.

FACTS OF CASE: In the given situation LLP has registered office in Pune and now wants to shift to Mumbai

Conclusion: As per the provision of LLP Act, 2008 it can shift its registered office from Pune to Mumbai.



SPQ

Q7 State the provision regarding reservation of name of LLP?

ANS: **RESERVATION OF NAME (SECTION16):**

A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—

- The name of a proposed LLP; or
 - The name to which a LLP proposes to change its name.
- Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the

rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section(2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.



SPQ

Q 8 Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹ 10,00,000 against the LLP but the worth of the assets of LLP are only ₹ 7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹ 3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

ANS: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.



SPQ

Q 9 M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

ANS: Provision: Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- undesirable; or
- identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.



Further, section 17 provides, if the name of LLP 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

Facts of case: LLP was registered with name M/s Vardhman Steels LLP. One partner from partnership firm M/s Vardhimaan Steels claims that LLP is incorporated with resemble name

Conclusion: Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor. Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

SPQ

Q10	There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?
ANS:	<p>Provision: Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. , the term “resident in India” means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year.</p> <p>Facts of case:In the given case there are 4 partners Rahul, Raheem, Kartar, Albert. Out of which Rahul and Albert are non-residents. And LLP wants to make Rahul and Raheem as designated partner.</p> <p>Conclusion:so LLP can do so because out of two designated partners atleast one should be resident of India and in this case out of Rahul and Raheem , Raheem is resident of India.</p>
Q11	What are the effects of registration of LLP?
ANS:	<p>EFFECT OF REGISTRATION (SECTION 14):</p> <ul style="list-style-type: none"> • Suing and being sued • acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible; • having a common seal, if it decides to have one; and • doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

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Q12	Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008.
Ans.	<p>Essential elements to incorporate Limited Liability Partnership (LLP)- Under the LLP Act, 2008,</p> <p>the following elements are very essential to form a LLP in India:</p> <ol style="list-style-type: none"> To complete and submit incorporation document in the form prescribed with the Registrar electronically; To have at least two partners for incorporation of LLP [Individual or body corporate]; To have registered office in India to which all communications will be made and received; To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

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