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Chapter 1

Indian Regulatory Framework

3

Multiple Choice Questions

1. A Chartered Accountant should be aware of law because

- (a) He has to be an expert in law
- (b) He has to argue in High court and Supreme court
- (c) He has to advice management and clients on legal matters at a basic or threshold level.
- (d) None of the above.

Answer: (c)

2. Which of the following is not a MAIN source of law in India?

- (a) Legal text books
- (b) The Parliament
- (c) State Assemblies
- (d) The Constitution

Answer: (a)

3. In India we follow the federal system of Government. This means that

- (a) All the power is with the President of India
- (b) Powers are distributed between Centre and States
- (c) All the power is with the Centre
- (d) There are no restrictions on the power of States

Answer: (b)

4. The Constitution of India was adopted in

- (a) 1947
- (b) 1949
- (c) 1950
- (d) 1951

Answer: (c)

5. The law concerned with violation of the rule of law and punishment of the same is called -

- (a) Family law
- (b) Criminal law
- (c) Civil law
- (d) Property law

Answer: (b)

6. Which of the following is NOT an example of Civil law?

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- (a) Breach of contract
- (b) Non-delivery of goods
- (c) Traffic offenses
- (d) Non-payment of dues

Answer:(c)

7. When a law is proposed in Parliament it is called

- (a) Act
- (b) Statute
- (c) Bill
- (d) Notification

Answer:(c)

8. Which of the following is NOT a department of the Ministry of Finance?

- (a) Department of Economic Affairs
- (b) Department of Expenditure
- (c) Department of States
- (d) Department of Revenue

Answer:(c)

9. Courts get territorial limits based on

- (a) The local limits within which the party resides
- (b) The local limits within which the property under dispute is located
- (c) either a or b
- (d) None of the above

Answer:(c)

Descriptive Questions

Questions 1

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

Answer 1

(I) Supreme Court

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

(II) High Court

The highest court of appeal in each state and union territory is the High Court.

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

Questions 2

What do you understand by Law? Also, elaborate the procedure for making a Law.

Answer 2

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

The Process of Making a Law

- When a 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

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Nature Of Contracts

Multiple Choice Questions

1. An agreement enforceable by law is a

- (a) Promise
- (b) Contract
- (c) Obligation
- (d) Lawful promise

Answer:(b)

2. A void agreement is one which is -

- (a) Valid but not enforceable
- (b) Enforceable at the option of both the parties
- (c) Enforceable at the option of one party
- (d) Not enforceable in a court of law.

Answer:(d)

3. An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a

- (a) Valid Contract
- (b) Void contract
- (c) Voidable contract
- (d) Illegal contract

Answer:(c)

4. When the consent of a party is not free, the contract is

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Illegal

Answer:(b)

5. In case of illegal agreements, the collateral agreements are:

- (a) Valid
- (b) Void
- (c) Voidable

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- (d) None of these

Answer:(b)

6. An offer may lapse by:

- (a) Revocation
- (b) Counter Offer
- (c) Rejection of offer by offeree
- (d) All of these

Answer:(d)

7. A proposal when accepted becomes a

- (a) Promise
- (b) Contract
- (c) Offer
- (d) Acceptance

Answer:(a)

8. If A says to B "I offer to sell my house to you for ₹ 40,00,000" and B accepts the offer by saying clearly "I accept your offer", it is a/an

- (a) Implied offer
- (b) Express offer
- (c) General offer
- (d) None of the above

Answer:(b)

9. 'A' offered a reward of ₹ 1,00,000 for recovery of some valuable missing articles. 'B' who did not know of this offer, found the missing articles. Which one of the following is the correct solution to this problem?

- (a) Giving delivery of articles to 'A' amounts to an acceptance and hence 'B' is entitled to get the reward of ₹ 1,00,000
- (b) Giving delivery of articles to 'A' amounts to performance of a condition precedent to an offer and hence there is valid acceptance. So 'B' must get the reward of ₹ 1,00,000
- (c) As there is no acceptance of an offer due to want of Knowledge, 'B', is not entitled to get the reward of ₹ 1,00,000
- (d) In the absence of any legal obligation on 'A', no claim for reward of ₹ 1,00,000 is maintainable by 'B'.

Answer:(c)

10. Arun has two cars- one of white colour and another of red colour. He offers to sell one of the cars to Basu thinking that he is selling the car which has white colour. Basu agrees to buy the car thinking that Arun is selling the car which has red colour. Will this agreement become a valid contract?

- (a) Yes
- (b) No
- (c) Insufficient information
- (d) None of the above.

Answer:(b)

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11. A dress is displayed in the showroom with a price tag attached to the dress. A buyer interested in the dress and ready to pay the price mentioned in the tag approached the shopkeeper for purchasing the dress.

- (a) The shopkeeper can refuse to sell the dress as display of dress is just an invitation to offer.
- (b) The shopkeeper cannot refuse to sell the dress as the buyer has accepted the *offer*
- (c) In case of refusal, the shopkeeper will be liable for breach of contract
- (d) The shopkeeper cannot refuse to sell the dress but may charge higher price

Answer:(a)

12. A agrees to pay ₹ 1,000 to B if a certain ship returns within a year. However, the ship sinks within the year. In this case, the contract becomes

- (a) Valid
- (b) Void
- (c) Voidable
- (d) Illegal

Answer:(b)

13. A notice in the newspaper inviting tenders is

- (a) a proposal
- (b) An invitation to proposal
- (c) A promise
- (d) An invitation for negotiation

Answer:(b)

14. A telephonic acceptance is complete when the offer is

- (a) spoken into the telephone
- (b) heard but not understood by the offeror
- (c) heard and understood by the offeror
- (d) is received, heard and understood by some person in the offeror's house.

Answer:(c)

15. A and B agree to deal in smuggled goods and share the profits. A refuses to give B's share of profit. In this case:

- (a) B can enforce the agreement in the court
- (b) B can only claim damages
- (c) B has no remedy as the contract is illegal
- (d) B can enforce the contract and claim damages

Answer:(c)

16. Which one of the following statements is correct?

- (a) Void agreements are always illegal
- (b) Illegal agreements are voidable
- (c) Illegal agreement can be ratified by the parties

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- (d) Illegal agreements are always void

Answer:(d)

17. A voidable contract is one which

- (a) Can be enforced at the option of aggrieved party
- (b) Can be enforced at the option of both the parties
- (c) Cannot be enforced in a court of law
- (d) Courts prohibit

Answer:(a)

18. When offer is made to a definite person, it is known as

- (a) General Offer
- (b) Cross Offer
- (c) Counter offer
- (d) Special offer

Answer:(d)

19. On the face of a ticket, it is mentioned that to look for the terms and conditions lookbehind.

Mr. A bought the ticket but didn't read the terms and conditions. He:

- (a) is not bound by the terms and condition
- (b) may decide to bound by certain terms and ignore others
- (c) is bound by all the terms and conditions whether he read it or not
- (d) none of the above

Answer:(c)

20. It does not effect the free consent of the parties,

- (a) Fraud
- (b) Coercion
- (c) Incompetency of parties
- (d) Undue Influence

Answer(c)

21. contract is made without intention of parties.

- (a) Express
- (b) Implied
- (c) Quasi
- (d) Executory

Answer:(c)

22. A offers B to supply Books at Rs. 500 each. B accepts the same with condition of 30%discount. It is

- (a) Counter Offer
- (b) Cross Offer

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- (c) Specific Offer
- (d) General Offer

Answer:(a)

Question Answers

Question 1

“All contracts are agreements, but all agreements are not contracts”. Comment.

Answer 1

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

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

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

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

Question 2

A sends an offer to B to sell his second-car for ₹ 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition?

Answer 2

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

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

Question 3

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

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

Answer 3

- (i) It is an implied contract and A must pay for the services of the coolie detailed by him.

Implied Contracts: Implied contracts come into existence by implication. Most often the

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implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

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

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

- (iii) The above contract is a void contract.

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

Question 4

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

Answer 4

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

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

Question 5

State whether there is any contract in following cases:

- A engages B to do certain work and remuneration to be paid as fixed by C.
- A and B promise to pay for the studies of their maid's son
- A takes a seat in public bus.
- A, a chartered accountant promises to help his friend to file his return.

Answer 5

- It is a valid express contract
- It is not a contract as it is a social agreement
- It is an implied contract. A is bound to pay for the bus fare.

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(d) It is a social agreement without any intention to create a legal relationship.

Question 6

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

Answer 6

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

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



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Chapter 2.2

Consideration

13

Multiple Choice Question:

1. Which of the following statement is false? Consideration:

- (a) Must move at the desire of the promisor.
- (b) May move from any person
- (c) Must be illusory
- (d) Must be of some value

Answer:(c)

2. Consideration must move at the desire of

- (a) Promisor
- (b) Promisee
- (c) Any other person
- (d) Any of these

Answer:(a)

3. Consideration may be

- (a) Past
- (b) Present
- (c) Future
- (d) All of the above

Answer:(d)

4. Consideration in simple term means:

- (a) Anything in return
- (b) Something in return
- (c) Everything in return
- (d) Nothing in return

Answer:(b)

5. Which of the following is not an exception to the rule - No consideration, No Contract

- (a) Compensation for involuntary services
- (b) Love & Affection
- (c) Contract of Agency
- (d) Gift

Answer:(a)

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6. Past consideration means

- (a) Consideration and promise should move together
- (b) Executed consideration
- (c) Consideration is provided prior to the making of the contract
- (d) Invalid consideration

Answer:(c)

7. A contract without consideration under Section 25 is:

- (a) void
- (b) voidable
- (c) valid
- (d) illegal

Answer:(c)

Question Answer

Question 1

“To form a valid contract, consideration must be adequate”. Comment.

Answer 1

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

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

Question 2

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Answer 2

Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements

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to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.

The leading authority in the decision of the ***Chinnaya Vs. Ramayya***, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

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

In such a case, third party to a contract can file the suit although it has not moved the consideration. Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.



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Other Essentials Elements OF a Contract

Multiple choice Questions

1. Ordinarily, a minor's agreement is

- (a) Void ab initio
- (b) Voidable
- (c) Valid
- (d) Unlawful

Answer:(a)

2. Consent is not said to be free when it is caused by

- (a) Coercion
- (b) Undue influence
- (c) Fraud
- (d) All of these

Answer:(d)

3. When the consent of a party is obtained by fraud, the contract is;

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Illegal

Answer:(b)

4. The threat to commit suicide amounts to

- (a) Coercion
- (b) Undue influence
- (c) Misrepresentation
- (d) Fraud

Answer:(a)

5. Moral pressure is involved in the case of

- (a) Coercion
- (b) Undue Influence
- (c) Misrepresentation

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(d) Fraud

Answer:(b)

6. A wrong representation when made without any intention to deceive the other party amounts to

- (a) Coercion
- (b) Undue influence
- (c) Misrepresentation
- (d) Fraud

Answer:(c)

7. Which of the following statement is true?

- (a) A threat to commit suicide does not amount to coercion
- (b) Undue influence involves use of physical pressure
- (c) Ignorance of law is no excuse
- (d) Silence always amounts to fraud

Answer:(c)

8. In case of illegal agreement, the collateral agreements are:

- (a) Valid
- (b) Void
- (c) Voidable
- (d) Any of these

Answer:(b)

9. An agreement the object or consideration of which is unlawful, is

- (a) Void
- (b) Valid
- (c) Voidable
- (d) Contingent

Answer:(a)

10. An agreement is void if it is opposed to public policy.

Which of the following is not covered by heads of public policy?

- (a) Trading with an enemy
- (b) Trafficking in public offices
- (c) Marriage brokerage contracts
- (d) Contracts to do impossible acts.

Answer:(d)

11. A paid ₹ 5000 to a Government servant to get him a contract for the canteen. The Government servant could not get the contract. Can A recover ₹ 5000 paid by him to the Government servant?

- (a) Yes, the agreement is opposed to public policy
- (b) No, the agreement is opposed to public policy
- (c) No, the agreements are a voidable agreement and can be avoided by A

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(d) No, the agreement falls under section 23 and hence illegal

Answer:(d)

12. With regard to the contractual capacity of a person of unsound mind, which one of the following statements is most appropriate?

- (a) A person of unsound mind can never enter into a contract
- (b) A person of unsound mind can enter into a contract
- (c) A person who is usually of unsound mind can contract when he is, at the time of entering into a contract, of sound mind
- (d) A person who is occasionally of unsound mind can contract although at the time of making the contract, he is of unsound mind

Answer:(c)

13. An agreement made under mistake of fact, by both the parties, forming the essential subject matter of the agreement is:

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Unenforceable

Answer:(a)

14. A is in dire need of ₹ 1,00,000 but was unable to get any loan from banks as he had no security to offer. A approached his friend B who knowing the helpless position of A lent money at a very high rate of interest, saying that he had himself borrowed money from C. The contract is:

- (a) Vitiated by undue influence that B had exercised over A due to his close friendship.
- (b) Void as the rate of interest being very high was unconscionable.
- (c) Not valid as B had wrongly misled A that he had borrowed money from C.
- (d) Valid as a friend could not be supposed to have wielded undue influence only because the money lent carried higher rate of interest.

Answer:(d)

15. Which of the following is not an exception to the rule that the agreement in restraint of trade is void:

- (a) A partner can be prevented for carrying on similar business
- (b) An outgoing partner can be restrained on carrying similar business
- (c) On dissolution of firm, partners may agree not to carry on similar business
- (d) The seller of goodwill of business can be prevented for carrying any kind of business at any place.

Answer:(d)

16. An agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event, is a

- (a) Wagering agreement
- (b) Contingent contract
- (c) Quasi contract
- (d) Uncertain agreement

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Answer:(a)

17. A wagering agreement in India is declared by the Contract Act as

- (a) Illegal and void
- (b) Void but not illegal
- (c) Voidable at the option of the aggrieved party
- (d) Immoral

Answer:(b)

18. An agreement, the object of which is to procure a public post, is

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Defective

Answer:(a)

19. While obtaining the consent of the promise, keeping silence by the promisor when he has a duty to speak about the material facts, amounts to consent obtained by:

- (a) Coercion
- (b) Misrepresentation
- (c) Mistake
- (d) Fraud

Answer:(d)

20. A enters into an agreement with B who has robbed A of ₹ 10,000 to drop prosecution against him in consideration of B's returning ₹ 8,000. Afterwards B refused to pay. A can get from B

- (a) ₹ 8,000
- (b) ₹ 100
- (c) Nothing
- (d) ₹ 10,000 plus damages

Answer:(c)

21. On attaining the age of majority, a minor's agreement:

- (a) cannot be ratified by him
- (b) becomes valid
- (c) can be ratified by him
- (d) becomes void

Answer:(a)

22. A threat to kidnap one's son in consideration of ₹ 5,00,000 is void because of:

- (a) inadequacy of consideration
- (b) incompetence of parties
- (c) absence of free consent
- (d) all of the above

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Answer:(c)

23. In which of the following case, aggrieved part can sue for damages:

- (a) Fraud
- (b) mistake
- (c) undue influence
- (d) misrepresentation

Answer:(a)

24. A mere attempt to deceive a party to a contract:

- (a) is fraud even though the party is not deceived
- (b) is not fraud unless the party is actually deceived
- (c) amounts to coercion
- (d) amounts to misrepresentation

Answer:(b)

Question & Answers

Question 1

“An agreement, the meaning of which is not certain, is void”. Discuss.

Answer 1

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

Question 2

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

Answer 2

Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932). Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

Question 3

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A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher?

Answer 3

Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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

A person is deemed to be in position to dominate the will of another:

- Where he holds a real or apparent authority over the other; or
- Where he stands in a fiduciary relationship to the other; or
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Question 4

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

Answer 4

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

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

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party

loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

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

Question 5

Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ₹ 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying ₹ 3,00,000/- to Mr.

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SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.

Answer 5

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

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

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

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

Question 6

Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ₹ 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ₹ 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872.

Answer 6

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

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

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

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Performance Of Contract

Multiple Choice Questions

1. On the valid performance of the contractual obligations by the parties, the contract

- (a) Is discharged
- (b) becomes enforceable
- (c) becomes void
- (d) None of these

Answer:(a)

2. Which of the following person can perform the contract?

- (a) Promisor alone
- (b) Legal representatives of promisor
- (c) Agent of the promisor
- (d) All of these.

Answer:(d)

3. A contract is discharged by novation which means the

- (a) cancellation of the existing contract
- (b) change in one or more terms of the contract
- (c) substitution of existing contract for a new one
- (d) none of these

Answer:(C)

4. A contract is discharged by rescission which means the

- (a) change in one or more terms of the contract
- (b) acceptance of lesser performance
- (c) abandonment of rights by a party
- (d) cancellation of the existing contract

Answer:(d)

5. If a person accepts a lesser sum of money than what was contracted for in discharge of the whole debt, it is known as:

- (a) Waiver
- (b) Rescission
- (c) Alteration
- (d) Remission

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Answer:(d)

6. Novation discharges a contract

- (a) No, it means, no new contract comes to existence
- (b) No, it means, new contract comes to existence, but old contract is not discharged
- (c) Yes, on novation, old contract is discharged and consequently it need not be performed
- (d) Yes, but only if parties agreed to discharge.

Answer:(c)

7. Novation and alteration are same

- (a) True, both result in discharging old contract.
- (b) False, novation discharges old contract, in alteration, the obligation remains.
- (c) False, however, both may have the effect of substituting a new contract for the old one
- (d) None of the above

Answer:(c)

8. A, B and C jointly promised to pay ₹ 60,000 to D. before performance of the contract, C dies. Here, the contract

- (a) Becomes void on C's death
- (b) Should be performed by A and B along with C's legal representatives
- (c) Should be performed by A and B alone
- (d) Should be renewed between A, B and D.

Answer:(b)

9. Vivaan lives on rent in a house owned by Swasti. Later he purchases the house from Swasti. The rent agreement is discharged due to:

- (a) Waiver of rights
- (b) Novation of contract
- (c) Merger of rights
- (d) Remission of contract

Answer:(c)

10. When prior to the due date of performance, the promisor refuses to perform the contract, it is known as:

- (a) Novation of the contract
- (b) Anticipatory breach of contract
- (c) Actual breach of contract
- (d) waiver of contract

Answer:(b)

11. A owes ₹ 15000 to B. A die leaving his estate of ₹ 12000. Legal representatives of A are:

- (a) liable to pay ₹ 12000 to B
- (b) liable to pay ₹ 15000 to B

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- (c) not liable to pay B
- (d) liable to pay ₹ 3000 to B

Answer:(a)

12. Rani contracted to teach dance to Shruti. Shruti paid an advance of ₹ 5000 for the same. Rani met with an accident and will not be able to dance. She has a daughter as her legal representative. Shruti can

- (a) force her daughter to teach her dance
- (b) rescind the contract and ask for refund of money
- (c) rescind the contract but cannot ask for refund
- (d) can sue Rani for non-performance of contract

Answer:(b)

Question answers

Question 1

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

- (i) Y can recover the contribution from X and Z,
- (ii) Legal representatives of X are liable in case of death of X,
- (iii) Y can recover the contribution from the assets, in case Z becomes insolvent.

Answer 1

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

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

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

As per the provisions of above sections,

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

Question 2

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the

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offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

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

Discuss in light of the Indian Contract Act, 1872?

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

Answer 2

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

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

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

Question 3

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

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

Answer 3

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

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

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit

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received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car.

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

Question 4

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2022.

(i) ₹ 12,120 which was due in May 2018.

(ii) ₹ 5,650 which was due in August 2020

(iii) ₹ 9,680 which was due in May 2021. Mr. Murari made payment on 1st April 2022 as below without any notice of how to appropriate them:

(i) A cheque of ₹ 9,680

(ii) A cheque of ₹ 15,000

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

Answer 4

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

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

Cheque of ₹15,000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Girdhari can appropriate the same against the debt of ₹12,120 which was due in 2016 and balance against ₹5,650 which was due in August 2018.

Question 5

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

(a) Mr. X promised to bring back Mr. Y to life again.

(b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached A on 19th March.

(c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.

Answer 5

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

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

(c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event

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resulting in impossibility of performance of contract.

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



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Chapter 2.5

Breach Of Contracts and Its Remedies.

Multiple Choice Questions

1. When prior to the due date of performance, the promisor absolutely refuses to perform the contract, it is known as

- (a) abandonment of contract
- (b) remission of contract
- (c) actual breach of contract
- (d) anticipatory breach of contract

Answer:(d)

2. In case of anticipatory breach, the aggrieved party may treat the contract

- (a) as discharged and bring an immediate action for damages
- (b) as operative and wait till the time for performance arrives
- (c) exercise option either (a) or (b)
- (d) only option (a) is available

Answer:(c)

3. In case of breach of contract, which of the following remedy is available to the aggrieved party?

- (a) Suit for rescission
- (b) Suit for damages
- (c) Suit for specific performance
- (d) All of these

Answer:(d)

4. Sometimes, a party is entitled to claim compensation in proportion to the work done by him. It is possible by a suit for

- (a) damage
- (b) injunction
- (c) quantum meruit
- (d) none of these

Answer:(c)

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5. Generally, the following damages are not recoverable?

- (a) Ordinary damages
- (b) Special damages
- (c) Remote damages
- (d) Nominal damages

Answer:(c)

6. Damages which arise naturally in usual course of things from breach itself are called:

- (a) Special damages
- (b) Liquidated damages
- (c) Nominal damages
- (d) General damages

Answer:(d)

7. A contracted to supply 200 bags of rice to B on 30th December, 2021. After supplying 20 bags of rice. A informed B that he will not supply remaining bags of rice to B. In this case,

- (a) There is anticipatory breach of contract
- (b) There is actual breach of contract
- (c) Both of the above
- (d) None of the above

Answer:(b)

8. Where the Court orders the defaulting party to carry out the promise according to the terms of the contract, it is called

- (a) Quantum Meruit
- (b) Rescission
- (c) Injunction
- (d) Specific Performance

Answer:(d)

9. Quantum Meruit means

- (a) a non-gratuitous promise
- (b) as gratuitous promise
- (c) as much as is earned
- (d) as much as is paid

Answer:(c)

10. Wrongful dishonour of cheque by a banker having sufficient funds in the account of customer, the court may award:

- (a) Mitigation of damages
- (b) contemptuous damages
- (c) Quantum Meruit
- (d) exemplary damages

Answer:(d)

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Question Answers

Question 1

“An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived”. Discuss stating also the effect of anticipatory breach on contracts.

Answer 1

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in **Frost v. Knight and Hochster v. DelaTour:**

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: “When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance.”

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

- (1) To either treat the contract as “rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Question 2

“Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties”. Explain.

Answer 2

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

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

In terms of Section 74 of the Act “where a contract has been broken, if a sum is named in the

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contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

Sri Chunnilal vs. Mehta & Sons Ltd (Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then, the court has powers to reduce the amount if it considers it reasonable to reduce.

Question 3

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

Answer 3

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

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

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

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

Question 4

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

Answer 4

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

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

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

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Chapter 2.6

Contingent And Quasi Contracts

34

Multiple Choice Question

1. A contract dependent on the happening or non-happening of future uncertain event, is

- (a) Uncertain contract
- (b) Contingent contract
- (c) Void contract
- (d) Voidable contract

Answer:(b)

2. A contingent contract is

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Illegal

Answer:(c)

3. A contingent contract dependent on the happening of future uncertain even can be enforced when the event

- (a) happens
- (b) becomes impossible
- (c) does not happen
- (d) either of these

Answer:(a)

4. A agrees to pay ₹ One lakh to B if he brings on earth a star from sky. This is a contingent contract and

- (a) Illegal
- (b) Valid
- (c) Voidable
- (d) Void

Answer:(d)

5. Which of the following is not a contingent contract:

- (a) A promise to pay B if he repairs his scooter.
- (b) A promise to pay B ₹ 10,000 if B's scooter is stolen.

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- (c) A promise to pay B ₹ 10,000 if B's burnt his hands.
- (d) A promise to pay B ₹ 10,000 if it rains on first of the next month.

Answer:(a)

6. Which of the following statements regarding Quasi-contracts is incorrect:

- (a) It resembles a contract
- (b) It is imposed by law
- (c) It is based on the doctrine of unjust enrichment
- (d) It is voluntarily created

Answer:(d)

7. For a contingent contract the event must be:

- (a) Certain
- (b) Uncertain
- (c) Independent
- (d) Uncertain and collateral

Answer:(d)

8. Which one of the following is not a characteristic of a contingent contract?

- (a) Performance depends upon a future event
- (b) The event must be uncertain
- (c) The event must be collateral to the contract
- (d) There must be reciprocal promises

Answer:(d)

9. Wagering contracts are:

- (a) Void
- (b) Voidable
- (c) Valid
- (d) Illegal

Answer:(a)

10. A contract of insurance is:

- (a) Wagering contract
- (b) unilateral contract
- (c) Quasi contract
- (d) contingent contract

Answer:(d)

11. Finder of goods should take care of goods as

- (a) bailee
- (b) owner
- (c) insurer

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(d) custodian

Answer:(a)

12. A swiggy man wrongly delivered the food to Mr. Ishaan. Ishaan who took the delivery, ate the food immediately. The swiggy boy returned soon once he got information about wrong delivery. Ishaan should make the payment as his case is deemed to be a quasi- contract under:

- (a) Claim for necessities supplied to persons incapable of contracting
- (b) responsibility of finder of goods
- (c) Payment by an interest person
- (d) obligation of person enjoying benefits under non-gratuitous act

Answer:(d)

Question Answers

Question 1

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

Answer 1

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

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.
5. A suit for its breach may be filed in the same way as in case of a complete contract.

Question 2

X, a minor was studying in M.Com. in a college. On 1st July, 2021 he took a loan of ₹ 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2021. X possesses assets worth ₹ 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed.

Answer 2

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

Since the loan given to X is for the necessities suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Yes, P can recover the amount from D. Section

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Question 3

P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?

Answer 3

Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other.

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

Question 4

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

Answer 4

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

Thus, a finder of lost goods has:

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

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

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Chapter 2.7

Contract Of Indemnity and Guarantee

Multiple Choice Question

1. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called

- (a) Surety contract
- (b) Simple contract
- (c) Contract of indemnity
- (d) None of above

Answer:(c)

2. X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. This is called:

- (a) Contract of indemnity
- (b) Contract of Guarantee
- (c) Quasi Contract
- (d) None of the above

Answer:(a)

3. Section 124 to 125, of the Contract Act, deals with:

- (a) Contracts of indemnity
- (b) Contracts of guarantee
- (c) Both (a) and (b)
- (d) None of above

Answer:(a)

4. Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of-

- (a) Indemnity
- (b) Guarantee
- (c) Wagering
- (d) None of the above

Answer:(b)

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5. A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. Whether-

- (a) A is liable for the price of the four sacks.
- (b) A is not liable for the price of the four sacks.
- (c) A is liable for the price of the two sacks only.
- (d) A is liable for the price of the one sack only.

Answer:(b)

6. X gives guarantee to the extent of ₹ 50,000 for the loans given from time to time by A to B. A gave a loan of ₹ 10,000 to B. Afterwards, X gives notice of revocation. Which is the correct option?

- (a) X is discharged from all liability to A for any loan granted.
- (b) X is liable to A for ₹ 10,000 on default of B.
- (c) X is liable to A for ₹ 50,000 on default of B.
- (d) X is liable to A for ₹ 40,000 on default of B.

Answer:(b)

7. The guarantee is valid even if ____ is incompetent to contract:

- (a) Principal Debtor
- (b) Surety
- (c) Both a & b
- (d) None of these

Answer:(a)

8. Section 143 of the Contract Act 1872 deals with

- (a) Guarantee obtained by free consent
- (b) Guarantee obtained by fraud
- (c) Guarantee obtained by concealment
- (d) None of above

Answer:(c)

9. A surety has a right of indemnity and right of subrogation against_____

- (a) Principal Debtor
- (b) Creditor
- (c) Co-Sureties
- (d) All of these

Answer:(a)

10. In contract of guarantee for whom guarantee given is called

- (a) Surety holder
- (b) Principal debtor
- (c) Both (a) and (b)
- (d) None of above

Answer:(b)

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Question Answers

Question 1

What are the rights of the indemnity-holder when sued?

Answer 1

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

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

It may be understood that the rights contemplated under section 125 are not exhaustive. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off.

Question 2

Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

Answer 2

Section 124 of the Indian Contract Act, 1872 states that “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person”, is called a “contract of indemnity”.

Section 126 of the Indian Contract Act, 1872 states that “A contract to perform the promise made or discharge liability incurred by a third person in case of his default” is called a “contract of guarantee”. The conditions under which the guarantee is invalid or void is provided in section 142, 143 and 144 of the Indian Contract Act. These include:

- (i) Guarantee obtained by means of misrepresentation.
- (ii) Guarantee obtained by means of keeping silence as to material circumstances.
- (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

Question 3

Mr. X, is employed as a cashier on a monthly salary of ₹ 12,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of ₹ 10,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?

Answer 3

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the instant case, the creditor has made variance (i.e. change in terms) without the consent of surety. Thus, surety is discharged as to the transactions subsequent to the change.

Hence, Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X

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during the first nine months but not for misappropriations committed after the reduction in salary.

Question 4

A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability.

Answer 4

According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is discharged or by any act or omission for the creditor the legal consequence of which is the discharge of the principal debtor.

In the given case, B omits to supply the necessary construction material. Hence, C is discharged from his liability.

Question 5

Mr. D was in urgent need of money amounting to ₹ 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability?

Answer 5

Co-sureties liable to contribute equally (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Question 6

Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years' contract at a monthly salary of ₹ 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay ₹ 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ₹ 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's appointment.

Answer 6

As per the provisions of Section 133 of the Indian Contract Act, 1872, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for

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misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation.

Question 7

A agrees to sell goods to B on the guarantee of C for the payment of the price of goods in default of B. Is the agreement of guarantee valid in each of the following alternate cases:

Case 1: If A is a Minor

Case 2: If B is a Minor

Case 3: If C is a minor.

Answer 7

Case 1: The agreement of guarantee is void because the creditor is incompetent to contract.

Case 2: The agreement of guarantee is valid because the capability of the principal debtor does not affect the validity of the agreement of the guarantee.

Case 3: The agreement of guarantee is void because the surety is incompetent to contract.

Question 8

S asks R to beat T and promises to indemnify R against the consequences. R beats T and is fined ₹ 50,000. Can R claim ₹ 50,000 from S.

Answer 8

R cannot claim ₹ 50,000 from S because the object of the agreement was unlawful. A contract of indemnity to be valid must fulfil all the essentials of a valid contract.

Question 9

Manoj guarantees for Ranjan, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000?

Answer 9

Discharge of Surety by Revocation: As per section 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee. However, liability of Manoj for previous transactions (before revocation) i.e. for ₹ 40,000 remains. He is liable for payment of ₹ 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

Question 10

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'C' advances to 'B', ₹ 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ₹ 2,00,000 without knowledge of 'A'. C cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth ₹ 80,000, under the Indian Contract Act, 1872.

Answer 10

Surety's right to benefit of creditor's securities: According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In the instant case, C advances to B, ₹ 2,00,000 rupees on the guarantee of A. C has also taken a further security for ₹ 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. ₹ 80,000 and will remain liable for balance ₹ 1,20,000.



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Chapter 2.8

Bailment & Pledge

Multiple Choice Question

1. Bailment means

- (a) temporary delivery of goods.
- (b) permanent delivery of goods.
- (c) partly delivery of goods.
- (d) None

Answer:(a)

2. Which is not essential element of contract of bailment

- (a) doing contract.
- (b) Purchase of goods.
- (c) delivery of goods.
- (d) return of goods in specific time.

Answer:(b)

3. In the contract of bailment the person to whom goods is delivered, called

- (a) seller
- (b) bailee
- (c) bailor
- (d) agent

Answer:(b)

4. Bailee should care the goods as per

- (a) as a man of ordinary prudence
- (b) as owner
- (c) as principal
- (d) as a servant

Answer:(a)

5. Lien means

- (a) to retain goods in his possession
- (b) rights to sell the goods.
- (c) right to purchase the goods.

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(d) right to destroy the goods.

Answer:(a)

6. In case there are two or more joint owners of the goods, the Bailee has to deliver them back to _____, in the absence of any agreement to the contrary :

- (a) Any of the Joint owners.
- (b) Such joint owner for which all the joint owners have consented.
- (c) All the Joint owners collectively.
- (d) None of these.

Answer:(a)

7. A finder of goods is subject to the same responsibility as that of a

- (a) bailee
- (b) bailor
- (c) surety
- (d) purchaser

Answer:(a)

8. The bailment of goods as security for payment of a debt is called

- (a) pledge
- (b) bailment
- (c) mortgage
- (d) none of these

Answer:(a)

9. What is an essential element of a valid pledge?

- (a) Delivery of goods
- (b) Delivery of bills
- (c) Price
- (d) None of these

Answer:(a)

10. The pledge is a contract of

- (a) bailment
- (b) agency
- (c) guarantee
- (d) mortgage

Answer:(a)

Question Answers

Question 1

State the essential elements of a contract of bailment.

Answer 1

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Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:

- (i) Delivery of goods—The essence of bailment is delivery of goods by one person to another.
- (ii) Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
- (iii) Return of goods in specific—The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
- (iv) Ownership of goods—In a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.
- (v) Property must be movable—Bailment is only for movable goods and never for immovable goods or money.

Question 2

Give differences between Bailment and Pledge.

Answer 2

Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

- (a) **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.
- (b) **As to right of sale:** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
- (c) **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
- (d) **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
- (e) **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Question 3

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

- (i) V parks his car at a parking lot, locks it, and keeps the keys with himself.
- (ii) Seizure of goods by customs authorities.

Answer 3

As per Section 148 of the Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.

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- (i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with V, Section 148, of the Indian Contract Act, 1872 shall not be applicable.
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Question 4

A hires a carriage from B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

Answer 4

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Question 5

A bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed.

Answer 5

According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.

Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

Question 6

R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bears the loss and why?

Answer 6

M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Question 7

Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹ 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar

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belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar?

Answer 7

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

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

Question 8

Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Answer 8

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Question 9

Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

Answer 9

Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

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Chapter 2.9

Agency

49

Multiple Choice Question

1. A person employed to do any act and represent is called

- (a) agent
- (b) principal
- (c) owner
- (d) servant

Answer:(a)

2. Who can become an agent?

- (a) Both Minor & Adult
- (b) Minor
- (c) Adult person
- (d) Dead person

Answer:(a)

3. To create an agency, which is not required?

- (a) Principal
- (b) consideration
- (c) agent
- (d) third party

Answer:(b)

4. _____ is a person employed by, and acting under the control of original agent in the business of agency

- (a) A substituted agent
- (b) A sub agent
- (c) A mercantile agent
- (d) An universal agent

Answer:(b)

5. A substituted agent acts on behalf of _____

- (a) Principal
- (b) Sub-agent
- (c) Agent

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- (d) None of these

Answer:(a)

6. The power given to agent is

- (a) reasonable & unreasonable
- (b) expressed & implied
- (c) legal & illegal
- (d) all above

Answer:(b)

7. On whose insolvency the agency is terminated?

- (a) Sub agent
- (b) Agent
- (c) Principal
- (d) Del credere

Answer:(c)

8. Under which circumstances agent become personally responsible?

- (a) beyond authority
- (b) fraudulent transactions
- (c) fraud
- (d) All of above

Answer:(d)

9. It is the duty of the agent to protect and preserve the interest on behalf of the principal's representative in case of _____

- (a) Death of the principal
- (b) Insolvency of the principal
- (c) Both (a) & (b)
- (d) None of these

Answer:(c)

10. Agent should not to deal on his own account without first obtaining the consent of the principal, otherwise the principal may—

- (a) repudiate the transaction,
- (b) claim from the agent any benefit which may have resulted to him from the transaction,
- (c) Either (a) or (b)
- (d) Both (a) & (b)

Answer:(d)

Question Answers

Question 1

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A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ₹ 700. M sells it to D for ₹ 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Answer 1

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Question 2

State with reason whether the following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective.

Answer 2

Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

Question 3

Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?

Answer 3

Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Question 4

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the

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mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

Answer 4

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ₹ 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 5

Comment on the statement 'Principal is not always bound by the acts of a sub-agent'.

Answer 5

The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "**delegates non potest delegare**"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Question 6

ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?

Answer 6

To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

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Question 7

R is the wife of P. She purchased sarees on credit from Nalli. Nalli demanded the amount from P. P refused. Nalli filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nalli would succeed.

Answer 7

The position of husband and wife is special and significant case of implied authority. According to the Indian Contract Act 1872, where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessities. However, the implied authority can be challenged by the husband only in the following circumstances.

- (1) The husband has expressly forbidden the wife from borrowing money or buying goods on credit.
- (2) The articles purchased did not constitute necessities.
- (3) Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller.

- (4) The creditor had been expressly told not to give credit to the wife.

Further, where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessities, if he does not provide for her maintenance.

Since, none of the above criteria is being fulfilled; Nalli would be successful in recovering its money.

Question 8

Bhupendra borrowed a sum of ₹ 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency.

Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful.

Answer 8

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

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Formation Of Contract of Sale

Multiple Choice Question

1. A contract for the sale of goods where property would pass to the buyer on payment of total price would be;

- (a) sale
- (b) agreement to sell
- (c) hire-purchase contract.
- (d) sale on approval.

Answer:(b)

2. The term “goods” under Sale of Goods Act, 1930 does not include

- (a) goodwill.
- (b) actionable claims.
- (c) stocks and shares.
- (d) harvested crops.

Answer:(b)

3. A contract for the sale of “future goods” is

- (a) sale
- (b) agreement to sell.
- (c) void.
- (d) hire-purchase contract.

Answer:(b)

4. The sale of Goods Act, 1930 deals with the

- (a) movable goods only.
- (b) immovable goods only.
- (c) both movable and immovable goods.
- (d) all goods except ornaments.

Answer:(a)

5. Under Sale of Goods Act, 1930 the terms “Goods” means every kind of movable property and it includes

- (a) stock and share.

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- (b) growing crops, grass
- (c) both (a) and (b).
- (d) none of the above

Answer:(c)

6. The Sale of Goods Act, 1930 deals with

- (a) sale
- (b) mortgage.
- (c) pledge.
- (d) all of the above.

Answer:(a)

7. Which one of the following is true?

- (a) the provisions of Sale of Goods were originally with the Indian Contract Act, 1872.
- (b) the Sale of Goods Act, 1930 deals with mortgage.
- (c) the Sale of Goods Act restricts the parties to modify the provisions of law.
- (d) none of the above.

Answer:(a)

8. Goods which are in existence at the time of the Contract of Sale is known as

- (a) present Goods.
- (b) existing Goods.
- (c) specific Goods.
- (d) none of the above.

Answer:(b)

9. Which of the following is not a form of delivery?

- (a) constructive delivery.
- (b) structured delivery.
- (c) actual delivery.
- (d) symbolic delivery.

Answer : (b)

10. Which one of the following is/are document of title to goods?

- (a) railway receipt.
- (b) wharfinger's certificate.
- (c) warehouse keeper's certificate.
- (d) all of the above

Answer : (d)

11. Which one of the following is not true?

- (a) document showing title is different from document of title.
- (b) bill of lading is a document of title to goods.
- (c) specific goods can be identified and agreed upon at the time of the Contract of Sale.

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(d) none of the above.

Answer : (d)

12. Mercantile Agent is having an authority to

- (a) sell or consign goods.
- (b) raise money on the security of goods.
- (c) sell or buy goods.
- (d) any of the above.

Answer : (d)

13. Contract of Sale is

- (a) executory Contract.
- (b) executed Contract.
- (c) both of the above.
- (d) none of the above.

Answer : (b)

14. In which form of the contract, the property in the goods passes to the buyer immediately:

- (a) agreement to sell.
- (b) hire purchase.
- (c) sale
- (d) instalment to sell.

Answer:(c)

15. In case of hire purchase the hirer can pass title to a bona fide purchaser.

- (a) true.
- (b) False.

Answer:(b)

16. In a contract of sale, the agreement may be expressed or implied from the conduct of the parties.

- (a) true.
- (b) false.

Answer:(a)

17. In a contract of sale, subject matter of contract must always be money.

- (a) true.
- (b) false.

Answer:(b)

18. If a seller handed over the keys of a warehouse containing the goods to the buyer results in

- (a) constructive delivery
- (b) actual delivery
- (c) symbolic delivery
- (d) none of the above

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Answer:(c)

19. If A agrees to deliver 100 kg of sugar to B in exchange of 15 mts of cloth, then it is

- (a) Contract of sale.
- (b) Agreement to sell.
- (c) Sale on Approval.
- (d) Barter.

Answer:(d)

20. In a hire-purchase agreement, the hirer

- (a) has an option to buy the goods.
- (b) must buy the goods.
- (c) must return the goods.
- (d) is not given the possession of goods.

Answer:(a)

21. A agrees to deliver his old car valued at ₹1, 80,000 to B, a car dealer, in exchange for anew car, and agrees to pay the difference in cash it is

- (a) Contract of sale.
- (b) Agreement to sell.
- (c) Exchange.
- (d) Barter.

Answer:(a)

22. Legally, a contract of sale includes

- (a) sale.
- (b) agreement to Sell.
- (c) barter.
- (d) both (a) and (b)

Answer:(d)

23. The Sale of Goods Act, 1930 came into force on

- (a) 15th March, 1930.
- (b) 1st July, 1930.
- (c) 30th July, 1930.
- (d) 30th June, 1930.

Answer:(b)

24. The person who buys or agrees to buy goods is known as

- (a) consumer.
- (b) buyer.
- (c) both (a) and (b)
- (d) none of the above.

Answer:(b)

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25. Voluntary transfer of possession by one person to another is popularly known as

- (a) transfer.
- (b) possession.
- (c) delivery.
- (d) none of the above.

Answer:(c)

26. If X commissioned Y, an artist, to paint a portrait of A for 200 dollars & Y uses his own canvas & paint then it is

- (a) Contract of sale.
- (b) Contract of work & materials.
- (c) Sale on approval.
- (d) Hire-Purchase agreement.

Answer:(b)

27. The property in the goods means the

- (a) possession of goods.
- (b) custody of goods.
- (c) ownership of goods.
- (d) both (a) and (b)

Answer:(c)

28. The goods are at the risk of a party who has the

- (a) Ownership of goods.
- (b) Possession of goods.
- (c) Custody of goods.

Answer:(a)

29. In case of sale of standing trees, the property passes to the buyer when trees are

- (a) felled and ascertained.
- (b) not felled but earmarked.
- (c) counted and ascertained.
- (d) both (b) and (c)

Answer:(a)

30. In case the delivery of goods is delayed due to the fault of party, the goods shall be at the risk of defaulting party even though the ownership is with the other party.

- (a) True, if there is a provision to this effect.
- (b) False, as it is against the general rule.

Answer:(a)

31. Which of the following modes of delivery of goods is considered effective for a valid contract of sale?

- (a) Actual delivery.

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- (b) symbolic delivery.
- (c) Constructive delivery.
- (d) all of these.

Answer:(d)

Question Answer

Question 1

A agrees to buy a new TV from a shop keeper for ₹ 30,000 payable partly in cash of ₹ 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer.

Answer 1

It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods. In the given case, the new TV set is agreed to be sold for ₹ 30,000 and the price is payable partly in exchange of old TV set and partly in cash of ₹ 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

Question 2

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?

Answer 2

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

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

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

Question 3

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?

Answer 3

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 give 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.

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Question 4

Classify the following transactions according to the types of goods they are:

A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.

A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.

T agrees to sell to S all the apples which will be produced in his garden this year.

Answer 4

- (i) 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 becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- (ii) If A agrees to sell to B one packet of 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.
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'



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Conditions And Warranties

Multiple Choice Question

1. A stipulation which is essential to the main purpose of the contract is called-

- (a) Warranty
- (b) Guarantee
- (c) Condition
- (d) Indemnity

Answer:(c)

2. Breach of condition gives the aggrieved party-

- (a) Right to sue for damages
- (b) Right to repudiate the contract
- (c) Both (a) and (b)
- (d) None of these

Answer:(c)

3. Condition may be treated as a warranty when there is –

- (a) Waiver of condition by the buyer
- (b) Buyer elects to treat breach of condition as a breach of warranty
- (c) Acceptance of goods by the buyer in case of non-severable of contract of sale
- (d) All of the above

Answer:(d)

4. The doctrine of Caveat Emptor does not apply, when

- (a) the goods are bought by sample.
- (b) the goods are bought by sample as well as description.
- (c) The exact purpose is known to the seller and is a regular dealer
- (d) All of the above

Answer:(d)

5. Which of the following is not an implied condition in a contract of sale?

- (a) condition as to title.
- (b) condition as to description
- (c) condition as to free from encumbrance.
- (d) condition as to sample.

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Answer:(c)

6. The conditions and warranties may be in the form of

- (a) express.
- (b) implied.
- (c) either (a) or (b).
- (d) none of the above.

Answer:(c)

7. Which one of the following is not an implied warranty

- (a) warranty as to undisturbed possession.
- (b) warranty as to existence of encumbrance.
- (c) disclosure of dangerous nature of goods.
- (d) warranty as to quality or fitness by usage of trade.

Answer:(b)

8. In case of goods sold by sample, the goods should correspond with the sample other wise

- (a) buyer can reject the goods.
- (b) buyer cannot reject the goods.
- (c) contract is automatically terminated.
- (d) seller is liable to punishment.

Answer:(a)

9. M, a shopkeeper, sold a Television set to N, who purchased it in good faith. The set had some manufacturing defect and it did not work after a few days in spite of repairs. In this case, the television was not merchantable as it was not fit for ordinary purpose.

- (a) the buyer has no right to reject the television.
- (b) the buyer has the right to reject the television and to have refund of the price.
- (c) both of the above.
- (d) none of the above [(a) & (b)]

Answer:(b)

10. Where the buyer is deprived to goods by their true owner, then the buyer

- (a) may recover the price for breach of the condition as to title.
- (b) Can not recover the price for breach of the condition as to title.
- (c) either (a) or (b)
- (d) none of the above.

Answer:(a)

11. Where goods are bought by description from a seller who deals in goods of that description, what is the implied condition?

- (a) That goods shall be of merchantable equality
- (b) That the buyer shall have reasonable opportunity of comparing the bulk

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- with the sample
- (c) The goods shall be of excellent quality
- (d) The goods shall be free from defects

Answer:(a)

12. A warranty is stipulation

- (a) Essential to the main purpose of the contract
- (b) Collateral to the main purpose of the contract
- (c) Very important to the seller
- (d) Very important to the buyer

Answer:(b)

13. In a sale by sample and description, there is an implied condition

- (a) That bulk of the goods correspond with the sample
- (b) That bulk of goods must correspond to the description as well as the sample thereof
- (c) The bulk of goods must correspond either to the description or to the sample
- (d) The bulk of goods must correspond to the description only

Answer:(b)

Questions and Answers

Question 1

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.

1. Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
2. Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

Answer 1

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

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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

As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

Question 2

Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930? What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

Answer 2

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.
 - (i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.
 - (ii) In the instant case, the buyer does not have any option available to her for grievance redressal.
 - (iii) 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, then the seller will be held liable.

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Question 3

X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests '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?

Answer 3

Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)] "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)] In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car. X is therefore entitled to reject the car and have refund of the price.

Question 4

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?

Answer 4

According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible. In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

Question 5

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.

Answer 5

In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages.

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Question 6

A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?

Answer 6

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.

Question 7

Q asked P, the seller for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, machine delivered and was found unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930 discuss whether Mr. P is right in refusing to exchange the washing machine?

Answer 7

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. 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. Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

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Chapter 3.3

Transfer Of Ownership And Delivery Of Goods

67

Multiple Choice Question:

1. The property in the goods means-

- (a) Possession of the goods
- (b) Ownership of the goods
- (c) Custody of the goods
- (d) Both (a) and (c)

Answer:(b)

2. In case of sale on approval, the ownership is transferred to the buyer when he-

- (a) Accepts the goods
- (b) Adopts the transaction
- (c) Fails to return the goods
- (d) In all the above cases

Answer:(d)

3. If a seller hands over the keys of a ware house containing goods to the buyer, it results in-

- (a) Constructive delivery
- (b) Actual delivery
- (c) Symbolic delivery
- (d) None of these

Answer:(c)

4. A sell to B 100 bags of wheat lying in C's warehouse. A orders to C to deliver the wheat to B. C agrees to hold the 100 bags on behalf of B and makes the necessary entry in his books. This is a –

- (a) Actual delivery
- (b) Constructive delivery
- (c) Symbolic delivery
- (d) None of the above

Answer:(b)

5. Selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer is known as-

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- (a) distribution
- (b) appropriation
- (c) amortization
- (d) storage

Answer:(b)

6. In contract of sale of goods, if the seller is not the owner of goods, then the title of the buyer shall-

- (a) Not be same as that of the seller
- (b) Be same as that of the seller
- (c) Be better than that of the seller
- (d) None of the above

Answer:(b)

7. Nemo dat quad non habet means-

- (a) One cannot give what one does not have
- (b) Let the buyer be beware
- (c) Whatever is paid, is paid according to the intention or manner of the party paying
- (d) None of these

Answer:(a)

8. The goods are at the risk of the party who has the-

- (a) Ownership of the goods
- (b) Possession of the goods
- (c) Custody of the goods
- (d) Both (b) and (c)

Answer:(a)

9. If the seller delivers to the buyer a quantity less than he contracted to sell, the buyer may

- (a) Reject the goods,
- (b) Accept the goods
- (c) Either 'a' or 'b'
- (d) Neither 'a' or 'b'

Answer:(c)

10. Appropriation of goods means

- (a) Separating the goods sold from other goods
- (b) Putting the quantity of goods sold in suitable receptacles
- (c) Delivering the goods to the carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal
- (d) All of the above

Answer:(d)

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11. Which of the following is true as regards delivery of goods in instalments as provided under Sale of Goods Act:

- (a) The buyer is bound to accept the instalment deliveries only in case of perishable goods
- (b) The buyer is bound to accept the instalment deliveries only in case of sale of goods by description
- (c) The buyer is bound to accept the instalment deliveries only if agreed between the parties
- (d) Delivery of goods can't be made in instalments

Answer: (c)

Question Answer

Question 1

“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.

Answer 1

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) **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. (Proviso to Section 27).

Mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. [section 2(9)]
- (ii) **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)
- (iii) **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).
- (iv) **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

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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)]

- (v) **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)].
- (vi) **Sale by an unpaid seller:** Where on 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)].
- (vii) Sale under the provisions of other Acts:
 - (i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 - (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Question 2

J the owner of a Fiat car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than ₹ 50,000. The agent sells the car for ₹ 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.

Answer 2

The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

- (1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- (2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. We assume the agent P acted in the ordinary course of business and sold the car to buyer A in good faith. Therefore A, the buyer obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

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Question 3

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?

Answer 3

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. Also where there is contract for the sale of unascertained or future goods by description, the property in the goods thereupon passes to the buyer. when goods of that description are put in a deliverable state and 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, 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 the 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.

Question 4

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.

Answer 4

As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the goods e.g. he

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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.

Question 5

A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not?

Answer 5

According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:-

- (i) One of the several joint owners has the sole possession of them.
- (ii) Possession of the goods is by the permission of the co-owners.
- (iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.

The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

Question 6

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?

Answer 6

According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:-

- (i) The seller has done his act of putting the goods in a deliverable state and
- (ii) The buyer has knowledge of it.

Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case, according to the provisions of law, for 150 tons of wheat, sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

The wheat which was put in the sacks fulfils both the conditions that are:-

- (1) The wheat is put in a deliverable state in the sacks.

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- (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

Question 7

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?

Answer 7

According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-

- (i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.
- (ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20. When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These 5 tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

Question 8

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?

Answer 8

A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet. Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period.

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Chapter 3.4

Unpaid Seller

74

Multiple Choice Question

1. The unpaid seller has right of stoppage of goods in transit only where the buyer

- (a) become insolvent.
- (b) refuses to pay price.
- (c) acts fraudulently.
- (d) all of these.

Answer:(a)

2. An unpaid seller is having rights against

- (a) goods only.
- (b) the buyer only.
- (c) both goods and buyer.
- (d) none of the above.

Answer:(c)

3. Under which of the circumstances unpaid seller loses his right of lien

- (a) by estoppel.
- (b) where seller waived the right of lien.
- (c) where the buyer or his agent lawfully obtains possession of the goods.
- (d) any of the above.

Answer:(d)

4. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise

- (a) right of lien.
- (b) right of stoppage in transit.
- (c) right of resale.
- (d) none of the above.

Answer:(b)

5. The essence of a right of lien is to

- (a) deliver the goods.
- (b) retain the possession.
- (c) regain the possession.

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- (d) none of the above

Answer:(b)

6. Which of the following right can be exercised by an unpaid seller against the buyer, who is not insolvent

- (a) right of lien.
- (b) right of stoppage in transit.
- (c) both (a) and (b).
- (d) none of the above.

Answer:(a)

7. Which of the following is a buyer's right against the seller in case of breach of contract?

- (a) suit for non-delivery.
- (b) suit for specific performance.
- (c) suit for damages for breach of warranty.
- (d) all of the above.

Answer:(d)

8. An auction sale is complete on the

- (a) delivery of goods
- (b) payment of price
- (c) fall of hammer
- (d) none of the above.

Answer:(c)

9. Seller has right of resale where

- (a) goods are perishable.
- (b) seller has reserved such right.
- (c) seller gives notice.
- (d) all of these.

Answer:(d)

10. The aggrieved party can claim only damages in case of breach of warranty.

- (a) true.
- (b) false.

Answer:(a)

11. Under which circumstances, the right of stoppage can be exercised by an unpaid seller

- (a) the buyer has become insolvent.
- (b) the goods are in transit.
- (c) the seller must be unpaid.
- (d) all of the above.

Answer:(d)

12. Under which circumstances the unpaid seller can exercise right of re-sale

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- (a) when the goods are of perishable nature.
- (b) when he gives notice to the buyer.
- (c) when he gives notice to the buyer of his intention to re-sale and the buyer does not within a reasonable time pay the price.
- (d) both (a) and (c)

Answer:(d)

13. Where the seller wrongfully neglects to deliver the goods to the buyer, then the buyer

- (a) cannot sue the seller for damages for non-delivery.
- (b) may sue the seller for damages for non-delivery.
- (c) either (a) or (b)
- (d) none of the above.

Answer:(b)

14. Where the buyer is deprived to goods by their true owner, then the buyer

- (a) may recover the price for breach of the condition as to title.
- (b) cannot recover the price for breach of the condition as to title.
- (c) either (a) or (b)
- (d) none of the above.

Answer:(a)

15. Where the buyer wrongfully neglects or refuses to accept and pay for the goods,

- (a) the seller may sue buyer for damages for non-acceptance.
- (b) the seller cannot sue buyer for damages for non-acceptance.
- (c) the seller can sue buyers' banker for damages.
- (d) none of the above.

Answer:(a)

16. In an auction sale, the property shall be sold to the

- (a) Lowest bidder.
- (b) Highest bidder.
- (c) All bidders
- (d) None of the above.

Answer:(b)

17. In an auction sale, if the seller makes use of pretended bidding to raise the price, then the sale is

- (a) valid.
- (b) void.
- (c) voidable.
- (d) illegal.

Answer:(c)

18. In which of the following cases, the unpaid seller loses his right of lien?

- (a) delivery of goods to buyer.

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- (b) delivery of goods to carrier.
- (c) tender of price by buyer.
- (d) all of these.

Answer:(d)

19. The bidder at an auction sale can withdraw his bid

- (a) any time during auction.
- (b) before fall of hammer.
- (c) before payment of price.
- (d) none of these.

Answer:(b)

20. Where in an auction sale, the seller appoints more than one bidder, the sale is

- (a) void.
- (b) illegal.
- (c) conditional.
- (d) voidable.

Answer:(d)

21. Where in an auction sale notified with reserve price, the auctioneer mistakenly knocks down the goods for less than the reserve price, then the auctioneer is

- (a) bound by auction.
- (b) not bound by auction.
- (c) liable for damages.
- (d) both (a) and (c)

Answer:(b)

Question and Answer

Question 1

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?

Answer 1

A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

- (i) the goods have been sold without any stipulation as to credit;
- (ii) the goods have been sold on credit, but the term of credit has expired;
- (iii) the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller losses his right of lien thereon-

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- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;
 Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

Question 2

Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.

Answer 2

Position of Mr. D: Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D and already delivered to E, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

- (i) **Suit for price (Section 55):** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
- (ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
- (iii) **Suit for interest [Section 61]:** If there is no specific agreement between 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.

Question 3

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?

Answer 3

Right of stoppage of goods in transit: The problem is based on Section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer.

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Question 4

Suraj sold his car to Sohan for ₹ 75,000. After inspection and satisfaction, Sohan paid ₹ 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.

Answer 4

As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

- (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].
- (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-

- (1) Interest on the remaining amount
- (2) Interest during the pendency of the suit.
- (3) Costs of the proceedings.

Question 5

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?

Answer 5

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.

Question 6

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

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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?

Answer 6

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.

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. The conditions necessary for exercising this right are:-

- 1 The buyer has not paid the total price to the seller
- 2 The seller has delivered the goods to a carrier thereby losing his right of lien
- 3 The buyer has become insolvent
- 4 The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52).

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 Sale 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.

Question 7

J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?

Answer 7

The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-

- (i) When the buyer has made the transaction with the consent of the seller
- (ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.

Question 8

Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?

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Answer 8

By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Deepa gives the highest bid in the auction for the sale of an antique wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer breaks and damages the clock.

On the basis of the 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. Deepa will not be liable for loss and can avoid the contract.



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General Nature Of Partnership

Multiple Choice Question

1. The term 'Partnership' has been defined under _____ of the Partnership Act, 1932:

- (a) Section 3
- (b) Section 4
- (c) Section 5
- (d) Section 6

Answer:(b)

2. A partnership for which no period or duration is fixed under the Indian Partnership Act is known as:

- (a) Unlimited partnership
- (b) Co-ownership
- (c) Particular partnership
- (d) Partnership at will

Answer:(d)

3. The most important element in partnership is:

- (a) Business
- (b) Sharing of profits
- (c) Agreement
- (d) Business to be carried on by all or any of them acting for all.

Answer:(d)

4. A firm is the name of:

- (a) The partners
- (b) The minors in the firm
- (c) The business under which the firm carries on business
- (d) The collective name under which it carries on business

Answer:(d)

5. A partnership formed for the purpose of carrying on particular venture or undertaking is known as:

- (a) Limited partnership
- (b) Special partnership
- (c) Joint venture
- (d) Particular partnership

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Answer:(d)

6. In the absence of agreement to the contrary all partners are:

- (a) Not entitled to share profits
- (b) Entitled to share in capital ratio
- (c) Entitled to share in proportion to their ages
- (d) Entitled to share profits equally

Answer:(d)

7. A partnership at will is one:

- (a) Which does not have any deed
- (b) Which does not have any partner
- (c) Which does not provide for how long the business will continue
- (d) Which cannot be dissolved.

Answer:(c)

8. What among the following is not an essential element of partnership:

- (a) There must be an agreement entered into by all the persons concerned
- (b) The agreement must be to share the profits of a business
- (c) The business must start within six months from the date of agreement
- (d) The business must be carried on by all or any one of them acting for all.

Answer:(c)

9. Partnership is a relationship, which arises from:

- (a) Operation of law
- (b) An agreement
- (c) Status
- (d) Almighty

Answer:(b)

10. Which is not a characteristics of partnership firms?

- (a) Perpetual succession
- (b) Unlimited liability of partners
- (c) Mutual agency
- (d) Sharing of profits of business

Answer:(a)

11. Select the odd one out of the available options for the entitlement of "Partners in profits only":

- (a) He is entitled to share the profits only.
- (b) He is liable for the losses of the firm.
- (c) He is not liable for the losses of the firm.
- (d) He is liable to the third parties for all acts of the profits only.

Answer:(b)

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12. Mr. Pawan is nominal partner in the partnership firm so he:

- (a) is not entitled to share the profits.
- (b) is entitled to share the profits.
- (c) can take part in the conduct of business.
- (d) Is not liable to third parties for all acts of the firm.

Answer:(a)

13. When partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a:

- (a) Partnership for a fixed period.
- (b) Particular partnership
- (c) Partnership at will.
- (d) General partnership.

Answer:(c)

14. Mr. Samarth retires from the partnership firm without giving public notice and his name continues to be used on letterhead of the firm. Mr. Samarth is _____ in the case of repayment of loan to creditors.

- (a) liable as a partner.
- (b) not liable as a partner.
- (c) responsible.
- (d) liable as a retiring partner.

Answer:(a)

15. The “dormant partner” of the firm is:

- (a) not required to give notice of his retirement.
- (b) required to give notice of his retirement
- (c) not liable to the third parties for all act of the firm.
- (d) does not share profits and losses.

Answer:(a)

Question and Answer

Question 1

Mr. XU and Mr. YU are partners in a partnership firm. Mr. XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader believing MU as partner supplied 50 Laptops to the firm on credit. After expiry of credit period, ZU did not get amount of Laptop sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of price. Does MU is liable for such purpose?

Answer 1

As per Section 28 of Indian Partnership Act, 1932, 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

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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. In the given case, MU (the Manager) is also liable for the price because he becomes a partner by holding out as per Section 28 of Indian Partnership Act, 1932.

Question 2

Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She want to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed?

Answer 2

Ms. Lucy while drafting partnership deed must take care of following important points:

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

- Name of the partnership firm.
- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.
- Provisions for settlement of accounts in the case of dissolution of the firm.
- Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.

Question 3

State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

- (i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?
- (ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper

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- supplied to X?
- (iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

Answer : 3

As per Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

- (i) Yes, it is a case of partnership.
Reason: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.
- (ii) No, it is not a case of partnership
Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.
- (iii) No, it is not a case of partnership
Reason: Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because, neither there is existence of business, nor mutual agency is there.

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Multiple Choice Question**1. A partner can be expelled if:**

- (a) Such expulsion is in good faith
- (b) The majority of the partner does not agree on such expulsion
- (c) The expelled partner is given an opportunity to start a business competing with that of the firm
- (d) Compensation is paid

Answer:(a)**2. Which of the following is not the right of partner i.e., which he cannot claim as a matter of right?**

- (a) Right to take part in business
- (b) Right to have access to account books
- (c) Right to share profits
- (d) Right to receive remuneration.

Answer:(d)**3. Which of the following acts are not included in the implied authority of a partner?**

- (a) To buy or sell goods on accounts of partners.
- (b) To borrow money for the purpose of firm.
- (c) To enter into partnership on behalf of firm.
- (d) To engage a lawyer to defend actions against firm.

Answer:(c)**4. The reconstitution of the firm takes place in case of**

- (a) Admission of a partner
- (b) Retirement of a partner
- (c) Expulsion or death of a partner
- (d) All of the above

Answer:(d)**5. A new partner can be admitted in the firm with the consent of**

- (a) All the partners

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- (b) Simple majority of partners
- (c) Special majority of partners
- (d) New partner only.

Answer:(a)

6. A partner may be expelled from the firm on the fulfilment of the conditions that the expulsion power is exercised.

- (a) As given by express contract
- (b) By majority of partners
- (c) In absolute good faith
- (d) All of the above

Answer:(d)

7. A minor is:

- (a) A partner of a firm
- (b) Representative of the firm
- (c) Entitled to carry on the business of the firm
- (d) Entitled to the benefits of the firm

Answer:(d)

8. If a partner commits fraud in the conduct of the business of the firm:

- (a) He shall indemnify the firm for any loss caused to it by his fraud
- (b) He is not liable to the firm.
- (c) He is liable to the partners
- (d) He is liable to the third parties

Answer:(a)

9. Partners are bound to carry on the business of the firm-

- (a) To the greatest common advantage
- (b) For the welfare of the society
- (c) For the advantage of the family members
- (d) For earning personal profits

Answer:(a)

10. The liability of a minor partner is limited to the extent of:

- (a) His share in the firm
- (b) His personal assets
- (c) His share in the firm as well as his personal assets
- (d) He is not liable

Answer:(a)

11. The authority of a partner to bind the firm for his acts as contained in section 19 of the Partnership Act is known as:

- (a) Express authority

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- (b) Legal authority
- (c) Implied authority
- (d) Managerial authority

Answer:(c)

12. Which are the matters that require unanimous consent of all the partners:

- (a) Admission of a partner
- (b) Transfer by a partner of his interest in the firm
- (c) Fundamental change in the nature of the business
- (d) All of the above

Answer:(d)

13. For admitting a minor into the benefits of the partnership, which of the following is required?

- (a) Consent of the minor's guardian
- (b) Consent of the Registrar of firms
- (c) Consent of all the partners of the firm
- (d) All of the above

Answer:(c)

14. The implied authority of a partner of the firm does empower him to:

- (a) Open a bank account on behalf of the firm in his own name.
- (b) Enter into partnership on behalf of the firm.
- (c) Acquire immovable property on behalf of the firm.
- (d) Act expressing or implying an intention to bind the firm.

Answer:(d)

15. In case of transfer of share in a partnership firm by one partner to any third party give such third party entitlement:

- (a) to interfere with the conduct of the business.
- (b) to require accounts.
- (c) to receive the share of the profits of the transferring partner as agreed by the partners.
- (d) to receive the share of the profits of the transferring partner whether or not agreed by the partners.

Answer:(c)

Questions And Answer

Question 1

State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

Answer 1

Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

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The rights of such a transferee are as follows:

- (1) During the continuance of partnership, such transferee is not entitled
 - (a) to interfere with the conduct of the business,
 - (b) to require accounts, or
 - (c) to inspect books of the firm.

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

- (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - (b) for the purpose of ascertaining the share,
 he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

Question 2

Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

Answer 2

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Question 3

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in

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the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

- (i) Examine whether action by the partners was justified or not?
- (ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

Answer 3

Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

- (i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.
- (ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:
 - (a) the power of expulsion must have existed in a contract between the partners;
 - (b) the power has been exercised by a majority of the partners; and
 - (c) it has been exercised in good faith.

Question 4

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. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Answer 4

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.

- (1) 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
 - (2) Interest at the rate of 6 per cent annum on the amount of his share in the property.
- Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:

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- (a) the 20% shares of profits (as per the partnership deed); or
- (b) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Question 5

Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.

In the light of the Indian Partnership Act, 1932, explain:

- (i) To what extent X will be liable if he failed to give public notice after attaining majority?
- (ii) Can Mr. L recover his debt from X?

Answer 5

As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.

However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- (A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.
 - (i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.
 - (ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Question 6

Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership?

Answer 6

As per Section 29 of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but

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entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- to interfere with the conduct of the business.
- to require accounts.
- to inspect books of the firm.

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



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Chapter 4.3

94

Registration And Dissolution Of An Firm

Multiple Choice Questions

1. Registration of a firm is:

- (a) Compulsory
- (b) Optional
- (c) Occasional
- (d) None of the above

Answer:(b)

2. An unregistered firm cannot claim:

- (a) Set on
- (b) Set off
- (c) Set on and set off
- (d) None of the above

Answer:(b)

3. As per the accepted view, the registration of the firm is considered complete when

- (a) Complete application for registration is filed with the Registrar.
- (b) Registrar files the statement and makes entries in the Register of Firms.
- (c) Registrar gives notice of registration to all partners.
- (d) Court records the statement and certifies the entries in Register of Firms.

Answer:(b)

4. A partnership firm is compulsorily dissolved where

- (a) All partners have become insolvent
- (b) Firm's business has become unlawful
- (c) The fixed term has expired
- (d) In cases (a) and (b) only

Answer:(d)

5. On which of the following grounds, a partner may apply to the court for dissolution of the firm?

- (a) Insanity of a partner
- (b) Misconduct of a partner
- (c) Perpetual losses in business
- (d) All of the above

Answer:(d)

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6. Which of the following do not constitute a ground for dissolution by Court?

- (a) Misconduct by partner
- (b) Transfer of interest by partner
- (c) Just and equitable grounds
- (d) Insolvency of a partner

Answer:(d)

7. Upon dissolution of firm, losses, including deficiencies of capital, shall be paid first-

- (a) Out of Profits
- (b) Out of Capital
- (c) By the partners in their profit sharing ratio
- (d) By the partners equally

Answer:(a)

8. Public notice in case of a firm is not required in case of:

- (a) Admission of a partner
- (b) Retirement of a partner
- (c) Expulsion of a partner
- (d) Dissolution of the firm.

Answer:(a)

9. Which of the following do not constitute ground for dissolution by Court?

- (a) Insanity of the partner
- (b) Business carried on at a loss
- (c) Wilful misconduct of a partner
- (d) Expulsion of a partner

Answer:(d)

10. Dissolution of partnership between all the partners of a firm is called-

- (a) Dissolution of partnership
- (b) Dissolution of partners
- (c) Dissolution of the firm
- (d) Reconstitution of firm

Answer:(c)

11. A partnership firm has to be registered with:

- (a) Director of firms
- (b) Registrar of firms
- (c) Registrar of companies
- (d) Competent Court

Answer:(b)

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12. In settling the account after dissolution, the firm's assets shall be first applied in-

- (a) Losses including deficiencies of capital.
- (b) Payment of partner's loan.
- (c) Payment of partner's goodwill share.
- (d) Distribution to partners in their profit sharing ratio.

Answer:(a)

13. X, Y and Z are partners in a firm. Due to differences amongst the partners, there is deadlock in the management. X applies to the court for the dissolution of the firm. Will he succeed?

- (a) Yes, on just and equitable ground
- (b) No, because it is not a valid ground for dissolution
- (c) No, it will require consent of all the partners
- (d) Yes, if the Registrar of Firm agrees.

Answer:(a)

14. A firm is compulsorily dissolved on the:

- (a) Death of a partner
- (b) Adjudication of a partner as an insolvent
- (c) Expiry of a fixed period for which the firm was constituted
- (d) Business of the firm becoming illegal due to happening of an event.

Answer:(d)

15. The partnership deed does not include:

- (a) The nature of the business of the firm.
- (b) The duration of the firm.
- (c) The date when each partner joined the firm.
- (d) The date when each partner exit the firm.

Answer:(d)

16. Mr. A, partner of ABC Associates give notice in writing to all other partners i.e. Mr. B and Mr. C of his intention to dissolve the firm on 01.09.2020. Such notice was dated 30.08.2020. In the given case, the firm stands dissolved with effect from _____.

- (a) 30.08.2020.
- (b) 01.09.2020.
- (c) Neither 30.08.2020 nor 01.09.2020 but as per the date mentioned in partnership deed as last date of existence of the firm.
- (d) Either 30.08.2020 or 01.09.2020 as mutually agreed by all three partners.

Answer:(b)

17. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Such dissolution is known as _____.

- (a) Dissolution by contract.
- (b) Dissolution by agreement.
- (c) Dissolution by will.

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(d) Dissolution of Partnership.

Answer:(b)

18. The statement for the purpose of registration under Section 58(1) of Indian Partnership Act, 1932 can be signed by:

- (a) Any one partner of the Firm
- (b) Legal heirs of all partners of the Firm
- (c) All the partners or by their agents specially authorised in this behalf
- (d) Agents of all partners of the Firm.

Answer:(c)

Question And Answer

Question 1

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?

Answer 1

APPLICATION FOR REGISTRATION (SECTION 58):

(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing

Question 2

When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Answer 2

Dissolution of Firm: The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

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Dissolution of a Firm may take place (Section 39 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the firm becoming unlawful (i.e., compulsory dissolution);
- (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) wilful or persistent breach of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

Question 3

“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?

Answer 2

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, non- registration 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
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set- off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm’s property where the firm is dissolved.

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- (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.



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The Limited Liability Partnership Act, 2008

Multiple Choice Question

1. Ministry of Corporate Affairs enforced the LLP Act, with effect from-

- (a) 31st March, 2008
- (b) 1st April 2008
- (c) 31st March, 2009
- (d) 1st April 2009

Answer:(c)

2. Whether partnership law applies to the LLP-

- (a) Yes
- (b) No

Answer:(b)

3. State which of the statement is correct under the Limited Liability Partnership Act, 2008-

- (a) All partners have unlimited liability
- (b) All partners have limited liability

Answer:(b)

4. Which of the following cannot be converted into LLP?

- (a) Partnership firm
- (b) Private company
- (c) Listed company
- (d) unlisted company

Answer:(c)

5. The approved name of LLP shall be valid for a period of _ from the date of approval:

- (a) 1 Month
- (b) 2 Months
- (c) 3 months
- (d) 6 months

Answer:(c)

6. Name of the Limited Liability Partnership shall be ended by:

- (a) Limited
- (b) Limited Liability partnership or LLP
- (c) Private Limited

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(d) OPC

Answer:(b)

7. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?

- (a) An LLP has a legal personality separate from that of its members.
- (b) The liability of each partner in an LLP is limited.
- (c) Members of an LLP are taxed as partners.
- (d) A listed company can convert to an LLP.

Answer:(d)

8. For the purpose of LLP, Resident in India means:

- (a) Person who has stayed in India for a period of not less than 182 days during the current year.
- (b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- (c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year.
- (d) Person who has stayed in India for a period of not less than 120 days during the financial year.

Answer:(d)

Question And Answer

Question 1

Examine the concept of LLP.

Answer 1

Meaning – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of “limited liability partnership”

- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner’s wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm

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structure' LLP is called a hybrid between a company and a partnership.

Question 2

Enumerate the various characteristics of the LLP.

Answer 2

LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Minimum and maximum number of partners
- Business for profit only
- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign

Question 3

What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

Answer 3

Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

Question 4

What are the effects of registration of LLP?

Answer 4

Effect of registration (Section 14):

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

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- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Question 5

“LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.

Answer 5

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 6

Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008.

Answer 6

Essential elements to incorporate Limited Liability Partnership (LLP) - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) LLP Name.

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The Companies Act, 2013

Multiple Choice Question.

1. Maximum number of members under a private company as provided under the Companies Act, 2013.

- (a) 50
- (b) 150
- (c) 200
- (d) No limit

Answer:(c)

2. Document that regulates the management of internal affairs of a company are-

- (a) Memorandum of Association
- (b) Prospectus
- (c) Articles of Association
- (d) Certificate of incorporation

Answer:(c)

3. Under the Companies Act, 2013, "Significant influence" constitutes how much % of total share capital or of business decisions under an agreement?

- (a) At least 2%
- (b) At least 2.5%
- (c) At least 10%
- (d) At least 20%

Answer:(d)

4. A Private Company which is subsidiary of a Public Company is treated as-

- (a) Public Company
- (b) Private Company
- (c) Holding Company
- (d) Dormant Company

Answer:(a)

5. Which one of the following is not the content of the Memorandum of Association?

- (a) Name clause
- (b) Registered office clause

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- (c) Objects clause
- (d) Board of Directors clause.

Answer:(d)

6. An Act is said to be ultra vires a company when it is beyond the powers.

- (a) Of the Company
- (b) Of the Directors
- (c) Of the Directors but not the company
- (d) Conferred on the company by the Articles of Association.

Answer:(a)

7. Turquand Rule is related to:

- (a) Doctrine of ultra vires
- (b) Doctrine of constructive notice
- (c) Doctrine of indoor management
- (d) Doctrine of subrogation

Answer:(c)

8. The minimum number of members in a private company and public company are

- (a) Three and Seven respectively
- (b) Two and seven respectively
- (c) Two and nine respectively
- (d) None of the above

Answer:(b)

9. Only a natural person who is an Indian citizen and who has stayed in India for a period of at least ____ days during the immediately preceding financial year shall be eligible to incorporate an OPC.

- (a) 180 days
- (b) 181 days
- (c) 120 days
- (d) 183 days

Answer:(c)

10. XYZ Limited is having 15% share capital held by X Limited and 50% held by Central Government and 10% held by State Government and 25% held by other people then that company will be _ .

- (a) Government Company
- (b) Private Company
- (c) Public Company
- (d) Dormant company

Answer:(a)

11. The Doctrine of indoor management is a protection that is available to:

- (a) Shareholders
- (b) Outsiders who deal with the company

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- (c) Board of Directors
- (d) Creditors

Answer:(b)

12. The doctrine which advocates the fact that company cannot act beyond the scope of its memorandum of association is:

- (a) Doctrine of constructive notice
- (b) Doctrine of indoor management
- (c) Doctrine of ultra vires
- (d) Doctrine of intra vires

Answer:(c)

Question And Answer

Question 1

What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.

Answer 1

Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Question 2

Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer 2

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

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- Such company intends to apply its profit in
- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

- 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.
- The registrar shall on application register such person or association of persons as a company under this section.
- On registration the company shall enjoy same privileges and obligations as of a limited company.

Question 3

Briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

Answer 3

Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [**Ashbury Railway Company Ltd. vs. Riche**]. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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. For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

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Question 4

Explain clearly the doctrine of ‘Indoor Management’ as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of ‘Indoor Management’.

Answer 4

Doctrine of Indoor Management (the Companies Act, 2013): According to the “doctrine of indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of “constructive notice” and popularly known as the rule laid down in the celebrated case of **Royal British Bank v. Turquand**. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

- (a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity. In **Howard vs. Patent Ivory Manufacturing Co.** 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.

Likewise, in **Morris v Kansseen**, 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.

- (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.

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.

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.”

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- (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.

Question 5

A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed?

Answer 5

The House of Lords in *Salomon Vs Salomon & Co. Ltd.* laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

In *Dinshaw Maneckjee Petit* case it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

In the instant case, the four private limited companies were formed by A, the assessee, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

Hence, A cannot be regarded as separate from the private limited companies he formed.

Question 6

Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ₹ 25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed

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by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?

Answer 6

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

Question 7

Examine the following whether they are correct or incorrect along with reasons:

- (a) A company being an artificial person cannot own property and cannot sue or be sued.
- (b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Answer 7

(a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons

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can form a private company.

Question 8

Mike Limited is incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?

Answer 8

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison Office was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

Question 9

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ₹ 100 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

Answer 9

As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹ 15 crore, which is less than requisite control of 20% of total share capital (i.e.

₹ 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

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Chapter 7

112

The Negotiable Instruments Act, 1881

Multiple Choice Question.

1. A negotiable instrument is an instrument which is freely transferable from one person to another by:

- (a) Simple delivery
- (b) Indorsement and delivery
- (c) Indorsement
- (d) Registered post

Answer:(b)

2. An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is called as:

- (a) bearer instrument
- (b) Ambiguous instrument
- (c) Order instrument
- (d) Inland instrument

Answer:(b)

3. As per Negotiable Instruments Act, 1881, Negotiable Instruments means:

- (a) Promissory Note
- (b) Bills of Exchange
- (c) Cheque
- (d) All the above

Answer:(d)

4. How many parties in Bills of exchange:

- (a) 2
- (b) 3
- (c) 4
- (d) 5

Answer:(b)

5. On which of the followings, even not defined in Negotiable Instruments Act 1881, provisions of Act are applicable:

- (a) Hundies
- (b) Treasury Bills
- (c) Bearer Debentures
- (d) All of the above

Answer:(d)

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6. Which is not the essential characteristic of Bill of exchange:

- (a) Must be in writing
- (b) Must contain an express promise to pay
- (c) Instrument must be signed
- (d) Must be stamped

Answer:(b)

7. Which is not an Inland Instrument:

- (a) P/N made in India + payable in India + drawn upon person resident in India
- (b) P/N made in India + payable in India + drawn upon person resident outside India
- (c) P/N made in India + payable outside India + drawn upon person resident in India
- (d) P/N made in India + payable outside India + drawn upon person resident outside India

Answer:(d)

8. Negotiable Instrument which can be treated either P/N or BOE, is known as:

- (a) Inland Instrument
- (b) Inchoate Instrument
- (c) Ambiguous Instrument
- (d) Foreign Instrument

Answer:(c)

9. Order Instrument can be negotiated by:

- (a) By delivery only
- (b) By endorsement only
- (c) By endorsement & delivery
- (d) None of above

Answer:(c)

10. Where any cheque drawn by a person is dishonoured due to insufficiency of funds, such person shall be punished with:

- (a) imprisonment for a term which may extend to two years,
- (b) with fine which may extend to twice the amount of the cheque,
- (c) imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both,
- (d) No punishment

Answer:(c)

Question and Answer

Question 1

M drew a cheque amounting to ₹ 2 lakh 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

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Indorsement under the Negotiable Instruments Act, 1881?

Answer 1

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)

Question 2

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.

Answer 2

The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable.

M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Question 3

Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?

Answer 3

As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138

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that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 4

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.

Answer 4

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.

Question 5

'Nakul' made promissory note in favour of 'Sahdev' of ₹10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881?

Answer 5

According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

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