

Model Paper + RTP + MTP + PYQ + Questions



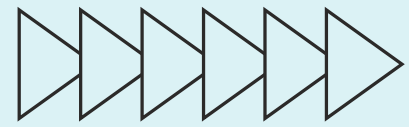
DIRECT QUESTIONS





IRF

{ 6 MARKS }



- 1) What is law and what is the process of making a law ?
- 2) What do you understand by Indian Judicial System ?
- 3) Write short note :-
 - ~ SEBI
 - ~ RBI
 - ~ IBBI



Question 1

Law is a set of obligation and duties formulated by the government to ensure justice and social welfare. India has a vast legal framework consisting of diverse social, political, cultural and economical aspects of law.

The process of drafting the law is as follows

When the law is proposed in the parliament it is called a bill. The bill is a draft which is presented in both the houses of the parliament needs to be passed by majority of the members present and voting. The bill is first presented in Lok Sabha and then in the Rajya Sabha, post approval the same is signed by the President and introduced in the official gazette then it becomes an Act and is applicable on all citizens of the country.

Question 2

Whenever there is a dispute between citizens of the country or the citizen and government, these disputes are handled by the judiciary.

The function of the judiciary RAPID

- Regulation of the Interpretation of Act
- Dispute Resolution
- Promotion of fairness among the citizens of the land

(i) Supreme Court

The Supreme Court is the apex body in the Indian judicial system. The Supreme Court was formed on 26 Jan 1950 and the power is granted under article 126. The principal bench at that time had 7 members and now 34 members in total. A writ petition can be filed under article 32 against public interest.

(ii) High Court

The highest court of appeal in each state and Union territory is the High Court. Article 214 of the Indian Constitution gives High Court the power to grant justice based territorial jurisdiction at present there are twenty five high courts in the country. An Individual

can seek remedy where his fundamental rights are suppressed under article 226 can file a writ petition in High Court.

(iii) District Court

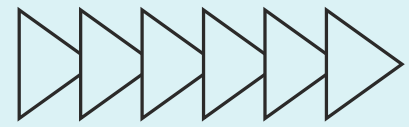
The district one established below the high court dealing with civil matters, the court of sessions deals with criminal offences. A District judge cannot try cases for amount greater than 2 crore. These cases are generally within local limits related to people and their property.

(iv) Metropolitan Courts

Metropolitan Courts are established in metropolitan cities where population is ten lakhs or more. The Chief Judicial Magistrate heads this departments.

and guarantee credit facilities

Securities Exchange Board of India	Reserve Bank of India	IBBI
• it is a regulatory body which control the securities market in the country • It is under the ministry of finance • To regulate the investors, stock brokers, companies etc. • It was established on 12th April 1968 as a body, the powers were granted on 30th Jan 1992 under Sebi Act-1992	• It is the apex bank in the Indian banking system. • It is under the ownership of the ministry of finance • The RBI has the following three departments. <u>BRBNM</u> Bharatiya Reserve Bank Note Monhan - which handles the printing of currency with two offices in Central and Western India. <u>NPCI</u> National Payments Corporation of India - which deals with settlement and clearance of payments. <u>DICCI</u> Deposit Insurance and Credit Guarantee Corporation - providing insurance of deposits	• It is a body formulated for overseeing the process of insolvency and bankruptcy • The regulator for overseeing these operations are i) Insolvency Professional Agencies (ii) Insolvency Professionals (iii) Information Utilities. • They handle cases related to NCLT and Debt recovery tribunal • The code was established on 1st Oct 2016.



- 4) Explain in brief the various types of laws in the Indian Legal System**
- 5) Write a short note on the following:**
- (i) Ministry of Corporate Affairs (MCA)**
 - (ii) Ministry of Home Affairs**



Define

Q4 Law is obligations & duties formulated by the government to obtain justice and welfare. India is vast legal framework composed of social, political, cultural and economic laws.

The type of laws prevalent in the country are as follows.

Criminal law - It composed of Indian Penal code which determines crime, nature and purpose of the crime, whereas the Code of Criminal procedure lays down punishment guide line. It covers offences rape, murder, attempt to murder etc.

Civil law - It covers the code of civil procedures, which deals with matters of dispute settlement involving, divorce, family law, tort, fraud etc. It covers only punishment and not imprisonment

Common Law - It is judicial precedent which covers the orders of the supreme court are binding on all high courts, related to cases which are of the same standing i.e. stare decisis and are same on all four legs, the common law requires the HC's to abide by the order of supreme court.

Principle of Natural Justice - This requires that in court judgements, the following principles are followed

Audi Alterum Partem - right to fair hearing

Nemo Juxta in Causa - a judge cannot be a judge in his own case

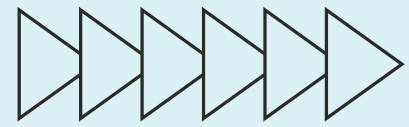
Reasoned decision - all the judgements shall be subject to evidences disclosed in court of law.



INDIAN CONTRACT ACT

{ 18 MARKS }





1) What is bailment? What are the essential elements of Bailment ?

2) 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.



Contract

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Q.1) Bailment defined under section 148 refers to a

transaction involving transfer of possession of

goods from the bailor to the bailee, with

or without consideration.

The essential elements of the contract of bailment are as follows:

(a) Contract - Bailment is based upon a contract. The may be express or implied.

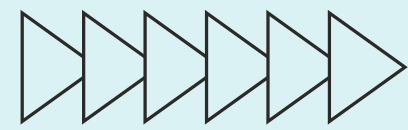
(b) Delivery of Goods - It involves delivery of Goods from the bailor to the bailee, such delivery can be constructive or actual delivery.

(c) Purpose - Bailment shall be made for a particular purpose, the same can be express or implied.

(d) Possession - In case of bailment there is transfer of possession of goods from the bailor to the bailee for completion of a purpose.

CO PaPeR

(e) Return of Goods - The goods are to be returned after completion of purpose, where such goods are retained after completion of purpose the bailee is responsible for any loss incurred.



- 3) Difference between *General Lien* and *Particular Lien* ?
- 4) Difference between wagering and contract of insurance
- 5) What is the meaning of contingent contract right briefly? It's essential also explain any three rules relating to enforcement of a contingent contract.



Q2) Lien refers to the right to retain possession of the goods for non payment of Consideration promised under the contract.

<u>General lien</u>	<u>Particular Lien</u>
Section 171	Section 170
A general lien is not automatic. It is exercised only when mentioned in the contract.	A Particular lien is automatic
It can be exercised against goods on which bailee has exercised no skill	It is used only when on the goods involved in lien some skill, labour or work is put in.
The General lien can be exercised on any goods of the bailor.	It is only exercised on such specific goods bailed.
Exercised by banker, policy brokers etc.	Bailee, finder of goods are eligible for Particular lien.

Q4)

Basis

Contract of Insurance

Wagering Agreement

Meaning

It is a indemnity contract to pay losses

It is a promise to pay money or money's worth on the happening or non happening of an event.

Consideration

In Insurance premium is paid and policy value is returned

There is no consideration just a bet to win or lose

Insurable Interest

The party insured has interest in the well being of the property insured

There is no property involved in wagering agreement, no interest in the event.

Contract of Indemnity

Every Contract of insurance except life insurance is an indemnity contract.

Wagering is not an indemnity contract, the loser shall pay money to the winner.

Enforceability

It is valid and enforceable

It is void and unenforceable

Premium

Calculation of Premium is Scientific

No logical calculations are made here

Public Welfare

Government promotes insurance for public welfare

Government disregards wagering agreement.

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Q5) According to Section 31 of ICA-1872, A contract

to do or not to do something, if some event, collateral to such contract, does or does not happen.

The rules for enforcement are given under section 32, 33, 36

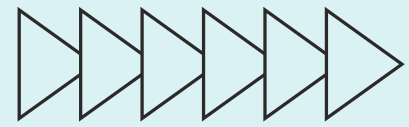
(a) Enforcement of Contracts on an event happening where a contingent contract is dependent upon happening of an event, and it is certain that such event shall never occur contingent is void.

(b) Enforcement of Contract on non happening of an event where a contingent contract is dependent upon non-happening of an event and it is certain that such event has already occurred the contingent is void.

(c) Contingent on specified event which is impossible where a contingent contract is dependent on a impossible event it is void.

Elements of Contingent Contract.

- ① The Performance of Contingent contract is dependent upon happening or non-happening of an event.
- ② The event referred here is collateral in nature
- ③ The contingent should ^{not} be the will of promisor
- ④ The event must be uncertain.



6) Who is considered as an agent under the Indian Contract Act, 1872 and what are the duties and obligations associated with this role?

7) What are the rights of indemnity holder, when sued under a contract ?

8) Agreements without consideration are void. Discuss.



Q6) Agent means a person employed to do any act for another person or to represent another person while dealing with a third party.

The duties and obligation of an agent are as follows

① Duty to follow Instructions: Any person acting as an agent shall be responsible to follow the instructions as given by the principal, where no instructions are given, what is required in such type of trade.

② Duty of reasonable care or skill - The agent shall act in the best possible manner taking care and reasonable protection of the goods belonging to the principal as a person of ordinary prudence.

③ Duty to render Proper Accounts - The agent shall maintain utmost care and respect while providing complete information in a diligent manner in relation to affairs of the business.

④ Duty not to deal on own account - Agent shall not deal on his own account, or the principal shall have the right to repudiate the contract and claim benefit resulting from such own transaction done by Agent.

⑤ Communicate with Principal - It shall be the Agent's Duty to communicate with the principal and consult for any difficulties.

⑥ Duty not to make secret profits - It is the duty of the Agent not to make secret profits in the conduct of business. Any secret profit shall be duly recovered.

⑦ Duty not to delegate - The Agent shall not further delegate his work to a sub Agent.

⑧ The Agent shall not disclose any confidential information related to the principal to any third party.

⑨ Agent to pay any amount received on behalf of the principal in the course of acting as an agent to the principal.

Q7 Under the Indemnity Contract the Indemnity holder shall have

the following rights: 125

D (i) all damages which he may be compelled to pay in a suit.
(eq. naksaa)

C (ii) all costs which he may be incurring to defend the suit.
(eq. lawyer charges)

S (iii) all sums which he may be required to pay as a
compromise (eq. settlement charges)

Q8) Consideration is an essential element of a contract, however agreements of goods can be without consideration, it is termed as gratuitous bailment. Or valid even in absence of such consideration.

The following agreements are valid even without consideration (7) Charity: If the promisee undertakes liability in nature of charity, such promise to pay is a valid contract (Kedarnath vs Gorie Mohammed)

(1) Natural Love and Affection - The following conditions are required to qualify such agreements as valid.

- It must be made out of natural love and affection
- Parties in near relationship
- Must be in writing
- It must be registered under law.

(2) Compensation for past Voluntary Service - In order for such an Agreement to be valid the following conditions are to be fulfilled.

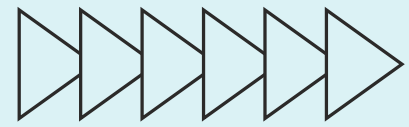
- The activities are done voluntarily
- The service is done for the promisor
- The promisor must be in existence
- The intention is to compensate

(3) Promise to pay time barred debt - Where a promise is taken in writing, to guarantee payment of time barred debt, it is valid and enforceable.

(4) Agency - Agency can be created without any consideration

(5) Gift - A completed gift does not involve any consideration.

(6) Bailment - Bailment involving transfer of possession



9) Explain privity of contract ? What are its exceptions

10) Provisions with respect to joint promisors in case of death or insolvency of promisors.

11) Explain in brief with reference to the provisions of the Indian contract act, what are the rights enjoyed by the surety against the creditor, principal, debtor and co-sureties.



Q9) The concept of Privity of Contract states that

a stranger to a contract cannot sue the parties to a contract, however a consideration can be provided by a stranger.

However the above rule does not apply in case of the following :

- (i) In case of trust - a beneficiary to the trust can enforce his right under the trust though he was not a party to the contract.
- (ii) In case of family settlement - terms agreed in course of settlement in favour of a third party, such third party can sue the parties to the contract.
- (iii) In case of marriage contracts - a provision made for the benefit of any person, may be enforced by a party not included in the contract.
- (iv) In case of assignment of a contract - when the benefit under a contract is assigned to a third party such party can sue for compensation.
- (v) Acknowledgement or estoppel - where the promisor acknowledges (accepts) himself as a agent of the party there is a binding contract.
- (vi) In case of covenant running with the land - the person who purchases any property irrespective whether the land owner has informed of existence of special condition shall be bound by it.
- (vii) Contracts entered through Agent - The principal can enforce the contracts entered by his agent where agent has acted within the scope of authority and in the name of the principal.

Q10)

Section 42 - In a contract there can be more than one promisor each promisor is equally responsible for the activity of all ^{other} _n promisors

Section 43 - In the event of death or insolvency of any of the promisor, since the promisors are jointly and severally liable debt can be recovered from one of the promisor, any of the promisor may be compelled to perform the promisee, however he is not discharged by other promisors

Section 44 - In the event of death or insolvency of all promisors legal representatives of all the promisors are responsible

Q11) The Rights of a Secretary under a contract are as follows :

(a) Rights against the creditors

⑤ Surety "right to benefit out of creditor securities" - A surety is entitled to benefit out of every security which creditor has against the principal debtor, where surety has discharged the debt.

⑤ **Right to set off** - If the creditor sees the surety, for payment, the any previous debt of PD will be first adjusted with that of PC.

$$\begin{array}{r}
 0.60 \rightarrow \\
 \text{PD} \quad \frac{100,000}{\text{PC}} \quad \frac{60,000}{\text{PC}}
 \end{array}$$

$$\begin{array}{r} 0.60 \\ \hline 100,000 \end{array} \begin{array}{l} \swarrow \text{PD} \\ \searrow \text{PC} \end{array}$$

60,000
 Surety

① → ⑧

Right to **proportionate reduction** — The surety has the right to claim **proportionate reduction** in his liability on insolvency of the principal debtor.

(b) Rights against co-societies

⑤ Co-sureties are liable to contribute equally - unless otherwise agreed all co-sureties are eligible to contribute equally.

(A) Liability bound by particular Amount - The co-ventures can agree to contribute upto a particular amount, then liability shall be fixed upto such amount.

(c) Rights against Debtors

Right of Subrogation - where a debt

③ PD → PC
S → PC

has been guaranteed becomes due on default of PD, and surety discharges such debt to the creditor, he gets all rights which PC had against the PD

(b) Implied promise to indemnify surety - There is an implied promise on the PD to pay back the amount due to the surety, in relation to debt paid by surety to creditor.

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↳ Sett off

↳ Security

↳ Subrogation

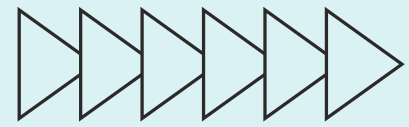
↳ Share Reduction

↳ Interesting hai

↳ Idemnity

↳ Equally

↳ Amount



12) Explain any five circumstances under which contract need not be performed with the consent of both parties.

13) Explain the term of 'Quasi contracts' & state their characteristics

14) Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872.



Q2 Contracts need not be performed section 62, 63, 64 of the Indian Contract Act 1872.

- Novation - The parties in the contract can repudiate the old contract and enter into a new contract or by mutual agreement between parties, the parties of the contract change and the contract remains the same.
- Rescission - A contract may also be discharged by rescission, where the parties to the contract mutually repudiate the contract. This discharges the parties to the contract.
- Alteration - A contract where the terms and conditions are altered without any change in the original contract, is termed as alteration of contract, the parties are discharged from the original terms of the contract.
- Promisee may waive or remit performance of promise - Every promisee has the right to waive performance of promise, however such waiver shall be subject to acceptance of some other satisfaction.
- Restoration of Benefit under a voidable Contract - where an agreement, which is voidable is enforced by the aggrieved party and the same is rendered void, all benefit derived under such agreement shall be restored to the parties of such contract.

Q13) Quasi is not an actual contract but it resembles a contract.

It is an obligation created by law in absence of a contract. It is based on the concept of unjust Enrichment i.e. none shall benefit from loss of another.

Characteristics of quasi Contracts are as follows:

- (i) In the first place, such a right is always a right related to money.
- (ii) Secondly, there is no agreement, it is an obligation imposed by law.
- (iii) It is in the nature of jus in personam, i.e. rights are available only against such individual.

Q 14

As per section 2(d) - where at the desire of the promisor, the promisee or any other person has done or abstain from doing something, such act or abstinence or promise is called consideration

Legal rules related consideration

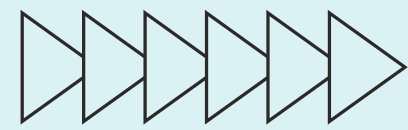
- ① Consideration may move at the desire of the promisor - Consideration in a contract is offered by the third party or promisee to the promisor.
- ② Consideration may move from the promisee or any other person - In India the consideration may be provided by the promisee or any third party on behalf of promisee

③ Executed and Executory consideration - A consideration which involves performance of an act is executed in nature, where performance is delayed it is executory in nature.

④ Consideration may be past, present or future - The consideration in a contract may be provided at the desire of the promisor in the past in exchange present performance or may be executory for future performance.

⑤ Consideration need not be adequate - Consideration need not be of adequate value, the requirement is that consideration should be of some value.

⑥ Consideration must be real and not illusory - It should something to which law attaches value. If it is impossible to execute it is not valid consideration.



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

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



Q.15) Anticipatory breach is the breach occurring prior to the due date of Performance.

The Effect of an Anticipatory breach is as follows:-

In event of an anticipatory breach the following options are available

(1) To treat the contract as repudiated and sue the other party for damages in relation to breach of contract immediately without any delay.

or

(2) He may elect not to cancel the contract and treat it as operative, under such case the guilty party may perform after reconsideration or benefit out of any impossibility of the event, which discharges the contract.

Q16) Both Trafficking in public offices and Stifle prosecution are void agreements since against public policy.

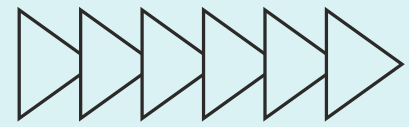
Trafficking in Public Offices and Titles

Agreements against trafficking state, that money

consideration to obtain any employment in public offices or any government titles is considered void and such offences are against welfare of public :

- (i) Amount paid to a public servant to retire early in order to secure job placements, is void.
- (ii) Acquire any public titles by payment of bribe. eg. Arjuna Award.

Stifle Prosecution - An agreement to tamper with witness or evidences, in order to disavow the proceeding from its normal course is termed as Stifle Prosecution such an agreement is void as it is against public welfare.



17) Define fraud. Whether silence will amount to fraud as per the Indian contract act.

18) Define possibility of performance, what are the different types of possibility, effect of possibility.

19) Who is responsible to perform the contract.

20) Define appropriation of payments.



Q17) Fraud refers to unintentional misstatement of facts, with the knowledge of falsity of facts, meant to deceive the other party by entering into a contract.
(Section 17)

Mere Silence shall not be treated as fraud, however

Silence shall be equivalent to fraud if

- There is a duty to speak
- Silence is equivalent to speech
- The parties are in fiduciary relationship.

Q18

Impossibility as defined s56, renders the contract void. There are two types of impossibilities.

Initial Impossibility - It refers to impossibility of performance which is existent at the time of formation of contract, the agreement is void ab initio.
e.g. agreement with a minor.

Subsequent Impossibility - Where the contract becomes impossible to perform on happening of an event it renders the agreement void, it is also known as supervening impossibility e.g. business becoming unlawful due to change in law.

Q19) According to Section 40, 41, 42, the Contract shall be performed as follows:

① Promisor himself - where the contract involves use of personal skill by the promisor, only the promisor can perform the contract, on death or incapacity of the promisor such contract is void due to impossibility of performance. However where personal skill is excused the Agent or any other person can also discharge duties under a contract.

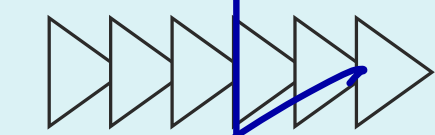
② Agent - where personal skill is not required under the contract, the promisor's Agent can perform the contract.

③ Legal Representatives - The LR can perform the contract not requiring personal skill, if a contrary intention does not appear in the contract. Liability will be limited to amount of Assets inherited.

④ Third Persons - when a promisee accepts performance of a contract from a third person, the promisor is discharged from any liability towards the promisee.

⑤ Joint Promisors - when two or more promisors have made a joint promise to the promisee, unless otherwise agreed the promisee can enforce performance jointly or severally from any of the promisors.

Q21) An invitation to offer is not an offer, it is an invite given in form of a negotiation to receive an offer. Acceptance of an invite does not create an agreement.



21) Define invitation to offer.

22) Agreements against public policy are void. Why?

23) Differentiate between fraud and misrepresentation.

24) what do you mean by Quasi Contract? State any three features of a quasi contract? Repeated

25) Define term Acceptance and explain the legal rules.

Q22) All Agreements which are against public welfare or public policy are considered void in nature.

① Trafficking in Public Offices and Titles

Agreements against trafficking state, that money

consideration to obtain any employment in public offices or any government titles is considered void and such offences are against welfare of public :

- (i) Amount paid to a public servant to retire early in order to secure job placements, is void.
- (ii) Acquire any public titles by payment of bribe. eg. Arjuna Award.

② Stifle Prosecution - An agreement to tamper with witness or evidences, in order to disway the proceeding from its normal course is termed as Stifle Prosecution such an agreement is void as it is against public welfare.

③ Trading with Alien Enemy - Any trade, other than approved by Government, during the times of war when a country is considered as an alien enemy is void.

④ Maintenance & Champerty

- Maintenance → is an agreement in which a person is ready to support a law suit without any interest in it.
- Champerty → is an agreement in which the party assisting to file the suit has claim for a portion of winnings from such case.

⑤ Agreements to create monopoly - Where any Agreement is formed to create any monopoly which adversely hampers the situation of competition in the country is called an agreement against public policy.

⑥ Marriage Brokerage Contracts - An agreement to receive a commission an amount on account of finalising a marriage ceremony is a marriage Brokerage Contract and is void. Marriage business is not covered.

⑦ Interference with course of justice - Where agreement is made to bribe a judicial officer or an advocate to decide the case in a person's favour, such an agreement is in nature of interference with course of Justice.

⑧ Interest over Obligation - Any agreement where the person involved selects his interest over the duty or obligation he is bound to perform such agreement is void.

Q23) The following points differentiate between fraud and misrepresentation

Basis	Fraud	Misrepresentation
<u>Knowledge of truth</u>	The person making the statement is aware about falsity of facts	The person making the statement believes it to be the truth.
<u>Rescission of Contract</u>	The party aggrieved may repudiate the contract and claim for damages	The injured party can only repudiate the contract.
<u>Intention</u>	To deceive the other party by hiding the truth	There is no intention to deceive the other party.
<u>Means to discover the truth</u>	The aggrieved party shall not have means to discover the truth	The injured party can request that means to discover truth were available

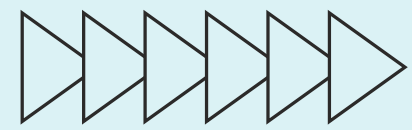
Q25) Section 2(b) defines Acceptance

When the person to whom proposal is indicates his assent thereto, the proposal is accepted.

The offer when Accepted forms the Agreement

The legal rules related to acceptance are as follows:-

- (1) Acceptance shall be made by the person to whom the offer has been made, this occurs in case of specific offer
(Boulton vs Jones)
- (2) Acceptance must be communicated, by offeror to the offeree, without communication the offer cannot be deemed accepted (Metropolitan Railway Co)
- (3) Acceptance may be absolute or unconditional, the acceptance to the contract shall be absolute and without any changes or addition in terms of the contracts.
- (4) Acceptance shall be made by the mode prescribed in the offer, where no mode is prescribed acceptance can be made in most reasonable manner.
- (5) Mere Silence is not acceptance, i.e. offer cannot be accepted in an implied manner merely by silence.
(Felthouse vs Bindley).



26) Liquidated damages vs Penalty

27) Explain with reference to The Indian Contract Act, 1872 :

- (i) When a contract is said to be induced by "undue influence".**
- (ii) When a party is deemed to be in a position to dominate the will of another.**



Liquidated damages

If sum payable is less than or equal to the amount of loss incurred it is termed as liquidated damages

If amount is payable due to damage it is liquidated damages

It is a genuine pre estimate

The reason if to recover a fair estimate of loss incurred due to actions of a party.

Penalty

If the sum payable is far in excess of the actual damage it is a penalty.

If payment is to be made where damages are unlikely to be incurred it is referred as a penalty.

It is extravagant in nature

The charge of penalty is with the intention to create terror in the mind of the offender.

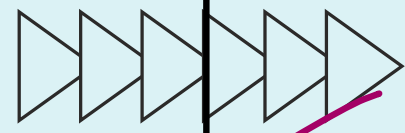
Q27) According to Section 16, of ICA 1872

- (i) Undue Influence refers to a contract formed due to inducement of will by a person who is in a dominant position to control the will of the other party, by entering into a contract taking unfair advantage of such influence.
- (ii) Under the following cases the party shall be eligible to dominate the will of the other person.

- Real or Apparent Authority - when a person holds real or apparent authority over the other party and enters in a contract to dominate the will of such person.
- Fiduciary relationship - where there is a relationship of trust the parties are in control to hamper the will of the other person in the contract.
- Mental distress - An Undue Influence can be used against a person suffering from any mental distress or illness or old age.
- Unconscionable bargains - where the terms of the contract are a clear indicative that something unfair has been done to enter such a contract, it is undue influence.

In the event of Necessity the following conditions shall be satisfied

- Agent is in possession of the goods
- Commercial necessity
- Bonafide action
- No Communication is possible with principal
- Most Reasonable course of Action



P N R of Business Class

(28) What are the conditions to be satisfied for an "Agent's authority in an emergency" under the provisions of The Indian Contract Act, 1872 ?

(29) Both a sub-agent and a substituted agent are appointed by the agent, however, there are some points of distinction between the two. Elaborate any 6 points.



Q29)

Sub Agent

- works under the control of the Agent
- Allowed to Appoint as per terms of Contract
- The Agent delegates his ~~own~~ duty to sub Agent
- Sub Agent not properly appointed does not create privity of contract
- Sub Agent has no right of remuneration from Principal
- Appointment of the sub Agent does not discharge the Agent in relation to the principal

Substituted Agent

- works under the contract of Principal
- He replaces the original Agent
- The substituted Agent works directly for the principal takes orders from the principal
- the privity is established between third party and Principal.
- Substituted Agent works directly for the Principal hence eligible for remuneration.
- Appointment of substituted Agent discharges the Agent towards the principal



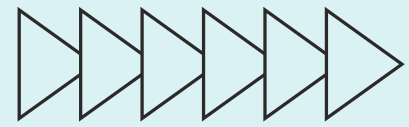
30) Explain any five circumstances under which contracts need not be performed with the (consent of both the parties.)

62 63 64

~~31)~~ As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". *Deivuty hi hai*
Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872.



SOGA
{ 7 MARKS }



- 1) Discuss provisions of Auction Sale.
- 2) What are the essentials for the appropriation of unascertain goods ?
- 3) Rights of unpaid seller against buyer.
- 4) Rights of the buyer against the seller.



SOGA

Q.1) According to Section 64 of the SOGA an Auction is an arrangement where the bidders engage with the auctioneer to purchase the commodity, and the goods are transferred to the highest bidder.

Legal Rules Related to Auction Sale

L (a) Where the goods are sold in lots each lot shall be subject to bid separately.

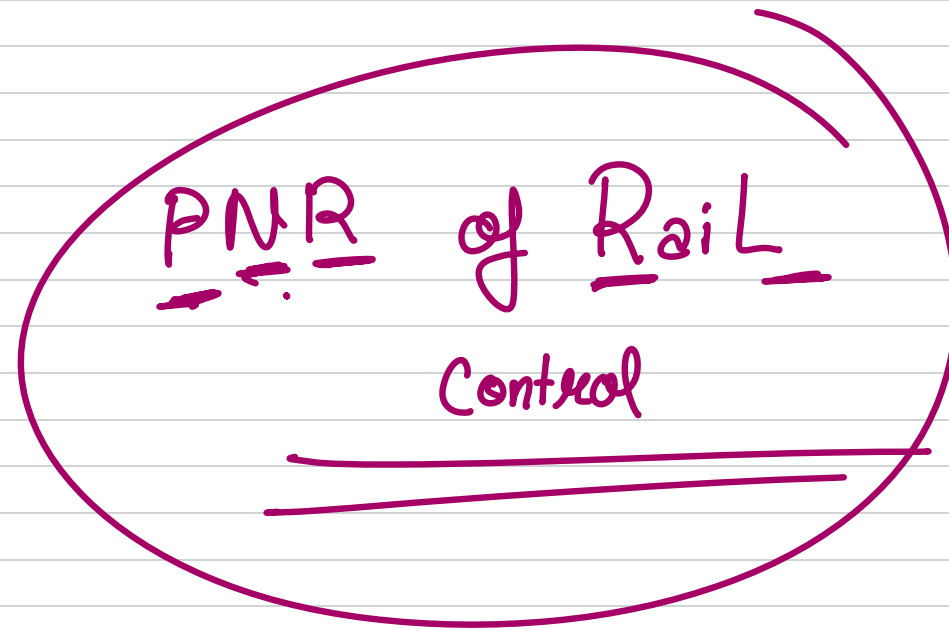
C (b) The completion of the contract is on the fall of the hammer or any other customary manner.

R (c) Right to bid may be reserved expressly or on the behalf of the seller, the right is reserved.

N (d) Where the seller has failed to notify his existence to be a part of the auction or any person on his behalf it shall be unlawful if the seller participates in such auction.

R (e) Reserved price is the minimum price from where the auction originates, also known as upset price or reserve price.

P (f) The seller may appoint a person to exercise pretended bidding, however this is voidable.



Q2) The Owner in case of sale of unascertain goods can be transferred by appropriation of goods in the following manner provided under section 23(1)

The essentials of appropriation are as follows.

- D
 - Goods are sold by description.
 - Goods should be in deliverable state.
- U
 - There is sale of unascertain or future goods.
 - The goods are unconditionally appropriated to the contract.
- A
 - The appropriation may be made by the seller with consent of buyer or by the buyer with consent of seller.
 - Assent may be express or implied, may be given before or after appropriation.

Q3

Rights of the seller towards buyer

Suit for Price (55) - where under a contract of sale price is to be paid irrespective of the time of delivery, failure to discharge price, the seller may sue the buyer for price of such goods.
Even if agreement to sale is made payment of price has to be done if mutually agreed in the contract whether property has been passed or not.

Suit for damages for non acceptance (56) - where the buyer wrongfully refuses delivery of goods, the seller may sue him for damages, section 73 of ICA 1872.

Repudiation of Contract prior to due date (60) - seller shall sue the buyer for wrongful termination of contract prior to delivery. The rule of Anticipatory breach shall apply.

Suit for Interest (61) - where the agreement contains payment of interest for delay in payment the seller can recover such interest from the buyer, however where interest is not provided, the court may award interest at rates found reasonable, for period of delay.

Q4

Rights of buyer against seller

① Damages for non-delivery (57) - where the seller wrongfully refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

② Suit for Specific Performance (58) - Buyer can appeal to the court requiring the seller to perform the contract however the court can order specific performance only when

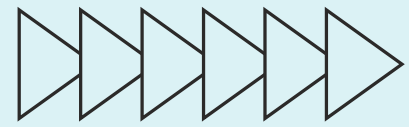
- D - Damages are not sufficient to compensate the loss.
- U - Goods are of unique nature.
- S - Goods are specific goods.
- S - performance is subject provisions of Specific Relief Act 1963

③ Suit for breach of warranty (59) - where there is a breach of warranty on the part of the seller, the buyer can claim damages in form of

- (i) diminution or extinction of price or,
- (ii) sue the seller for damages for breach of warranty

Repudiation of Contract prior to due date (60) - buyer shall sue the seller for wrongful termination of contract prior to delivery. The rule of Anticipatory breach shall apply.

Suit for Interest (61) - where the buyer has paid money to the seller and delivery is delayed or contract is repudiated the buyer is entitled to recover interest at rates reasonable to the court, for the period of delay from date of payment



5) Discuss the doctrine of *Caveat Emptor* and State Exceptions of the rule.

6) Sale by Sample (Case Study)

7) Discuss the provisions of sales and return as per section 24 ?

8) Explain any 6 circumstances in detail where ownership can be transferred by non owner.



Ans 5) The doctrine of Caveat Emptor states that, let the buyer beware, that is the buyer shall be aware about his selection of goods, as the buyer cannot hold the seller liable for his incorrect selection of goods or where goods do not comply with a particular purpose.

The Doctrine of Caveat Emptor contains the following exceptions

- ① Condition as to title - There is an implied condition that the title of the goods shall only be transferred by the owner of such goods or the person having the right to sell.
- ② Condition as to sample - where the goods are sold by sample there is an implied condition that the
a) bulk of the goods shall comply with sample.
b) the buyer has reasonable opportunity to compare the bulk with the sample.
c) the goods are free from any defects which is unmerchantable and not visible on examination (i.e. latent defect).
- ③ Condition as to sample & description - Goods sold by sample as well as description, the doctrine of Caveat Emptor shall not apply where goods fail to comply with such sample as well as description.
- ④ Condition as to Quality and fitness relevant for buyer's purpose - The seller is not obligated to provide goods to comply with buyer's purpose, however where the buyer:
 - has made the purpose known to the seller

- relied on the skill and judgement of the seller.
- seller is a dealer of such goods

Failure to comply with requirement, shall repudiate the contract.

- ⑤ Condition as to Merchantability - where the goods are sold by description, the implied condition requires the goods to be of merchantable quality i.e. fit for self use or resale. However where the defect is evident on reasonable examination, and the buyer is negligent, the doctrine protects the seller.

- ⑥ Seller actively conceals defects in the goods - where the seller is aware about the defect in the goods and actively conceals the same and injury incurred by the buyer the seller is liable for damages.

- ⑦ Trade Usage - An implied warranty as to trade and usage i.e. quality & fitness annexed to the contract, where the seller defects such condition the buyer has a claim for damages.

Question 7

Section 24

When the goods are delivered to the buyer on approval basis, i.e. return of the same shall be made to the seller if buyer refuses to accept the same, ownership is transfer if any one of following occurs:

- (a) When he signifies his approval or acceptance to the goods.
- (b) if no approval is made within specified time or in event of no time fixed within reasonable time and buyer retains the possession of the goods.
- (c) where he does something inconsistent to his ownership of goods eg. resale or pledge

Q8) According to Section 27 of the Sales of Goods Act, a non-owner purchase, the rule shall not apply.

cannot transfer a better title to the goods than he himself has, the Latin term *Nemo dat quod non habet*, restricts the transfer of a valid title from a non-owner.

⑥ Sale by an Unpaid Seller - Resale of goods by an unpaid seller under section 54 shall give a valid title to the goods.

However the above rule has the following exceptions

① Sale by Mercantile Agent - A sale by a mercantile agent of goods shall transfer a valid title to the buyer provided that

G - the buyer has acquired the goods in good faith.

D - the agent is a dealer of such goods.

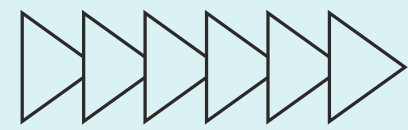
P - goods are in possession of the Agent.

② Sale by Joint Owners - where the sale is effected by one of the joint owners who is in possession of the goods, the bona fide purchaser acquires a valid title.

③ Sale under a voidable Contract - Sale effected under a contract where consent is obtained by coercion, fraud, misrepresentation, mistake or influence, is voidable at option of aggrieved party, sale effected during its existence of such voidable contract the buyer gets a valid title, where goods are purchased in good faith.

④ Sale by a person having possession after goods are sold - If a person has possession of goods and they are sold to a third person in good faith, such person shall have a valid title to the goods, even pledge of such goods shall be valid.

⑤ Sale by buyer obtaining possession before the property has been transferred - Any person obtaining goods from the buyer, under good faith shall acquire a valid title to the goods however if the same is goods received on hire



9) Destruction of Goods under section 7 & 8 ?

10) What are the right of the seller in relation to goods , for an unpaid seller

11) Discuss the provisions of transfer of ownership as per section 26.

12) When can condition be treated by warranty.
Differentiate between condition and warranty.



10 mins

7:00pm

Q9) Effect of destruction of Goods

Section 7

Where the goods are specific in nature, and are destroyed prior to agreement to sale, without the knowledge or fault of the seller, the agreement to sale is void, due to impossibility of performance.

Section 8

Where the goods are specific in nature, and are destroyed after the agreement to sale but before the sale is effected, without the fault of the buyer or the seller, the contract of sale is void due to impossibility of performance.

Q10)

Where the seller is an unpaid seller, i.e. has not received valuable consideration for his goods or part thereof, shall have the following rights in relation to goods:

Right of Lien - Lien refers to the right to retain possession of goods, when the property in goods has been transferred to buyer, the lien can be exercised in the following cases

- I - where the buyer is insolvent
- C - goods are sold without any stipulation of credit and amount not received. (i.e. Cash Sale)
- C - goods are sold on credit and the period of credit has expired.

Right of Stoppage in transit

- Where the goods are in transit and the seller is unpaid, the right of stoppage in transit can be exercised under following circumstances

- T - Goods are in transit
 - I - Buyer is insolvent
 - P - Price is unpaid
- Seller has parted with possession of goods.

Right of Resale

- Where the goods are perishable the seller can resale the goods without any notice to the buyer.
- However in the absence of any communication of resale the seller shall be ineligible to recover any loss on resale and shall return any profit made on resale to the buyer.
- Provided that where the contract of sale does not provide any notice to be given or the fact of resale is mentioned on the contract, notice shall not be required.

All Notes tomorrow

by
12 pm

Question 11

Section 26

Unless otherwise agreed upon, the risk related to the goods is transferred to the buyer, when the property there in is transferred to the buyer, irrespective of where delivery is made or not.

Provided that

where delivery is delayed due to fault of the buyer or the seller and it results in damage to the goods, the party in default shall be liable for any loss which might have occurred.

Provided further that, the above provisions do not affect the rights and liabilities of the bailee.

Q.12)

Condition and warranty can be differentiated on the following points.

Basis	Condition	warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract 12(2)	A warranty is collateral stipulation to the main purpose of contract 12(3)
Right for Breach of Contract	The condition if violated can result in termination of contract	where the warranty is violated can result in damages in favour of the buyer.
Conversion of Stipulation	A breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition.

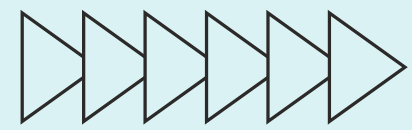
Condition can be treated as warranty under the following cases.

- W - where the buyer has voluntarily waived the performance of the condition for his own benefit.
- I - where the performance is excused by law or impossibility of performance.
- S - where the sale contract is non severable and the buyer has accepted the goods either wholly or in part therefore
- F - where the buyer elects to treat breach of condition as breach of warranty, and accepts damages for any loss incurred voluntarily.



IPA

{ 13 MARKS }



- 1) Distinguish between dissolution of firm and dissolution of partnership ?
- 2) What are the consequences of non registration ?
- 3) Expulsion of partner.
- 4) Rights & Liabilities of a Minor in partnership act, 1932



Partnership

Q1)

Basis

Dissolution of
Partnership

Dissolution of
Partnership firm

Continuation
of business

It does not affect
the continuation of
business, it
is called reconstitution
of business

It involves
discontinuation
of partnership

Order of Court

It cannot be affected
by order of the
court

It can be brought
upon by the court
to dissolve the
firm

Winding up

It does not involve
winding up of firm,
only revaluation of
Assets and liabilities
is done.

It involves winding
up and complete
realisation of
Assets &
liabilities

Final Closure of
Books

It does not involve
final closure of
Books

It involves final
closure of Books
of accounts

Scope

It may or may not
result in dissolution
of firm

It necessarily
results in
dissolution
of partnership

~~X~~ Part Silent Firm ~~X~~

~~X~~ Part Likhia Firm ✓
~~X~~ can
Continue

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/

Q2)

Registration of a partnership firm is not compulsory

under the Indian Partnership Act 1932. However under

Section 69 non registration results in following

consequences:

- (i) No suit in a Civil Court by firm or other partners against third party - An unregistered firm cannot bring any action against a third party for any breach of contract against the firm or any of the partners of such unregistered firm
- (ii) No relief to partners for claim of set off - If any suit is brought against the firm, then neither the firm nor the partners can claim any set off, other than rupees hundred.
- (iii) Aggrieved partner cannot bring any legal action against the firm - A partner of an unregistered firm cannot sue any of the partners or the firm to recover the amount due to him or his share in the firm's property.
- (iv) Third party can sue the firm even if the firm is unregistered in nature.

What are the rights non affected even if firm is unregistered?

- (i) The third party can sue the partners of firm.
- (ii) The right of a partner in case of dissolution of the firm to claim settlement of his share in property of the firm
- (iii) The power of Official Assignee, Receiver of Court to release the property of the insolvent partner of the firm.
- (iv) The right to sue to claim set off upto ₹ 100
- (v) The right of the legal executor to sue the firm for recovery of share of deceased partner

Answer 3 A partner may be expelled from the partnership firm subject to:

- G (a) removal is in good faith i.e. for benefit of the firm
- E (b) express provision in the agreement allowing such removal
- M (c) majority of the partners support such removal

However the test of good faith shall be guided by:

- 9674362647 (message)
- ShaenguptaKd
- ca-shaan-gupta

- The expulsion must be in the interest of the partnership
- The partner expelled should be given a notice
- Given an opportunity of being heard.

Q4

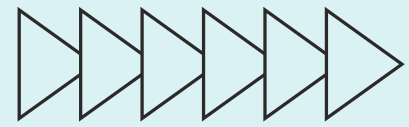
According to Section 30 of the Indian Partnership Act 1932, a minor cannot be admitted as a partner of the firm, however a minor can be admitted to the benefit of Partnership.

(i) Rights

- A minor has the right to share profits of the firm.
- He has the right to access books of accounts of the firm.
- He cannot sue the partners to recover his share of profits in the firm, but can only do so after severing his connection with the firm.
- On attaining majority, he may within a period of six months, determine whether he wishes to continue as a major partner or retire as a minor.

(ii) Liabilities

- The liability extends to his share of profit in the firm.
- Minor has no personal liability for the debts of the firm during minority.
- Minor cannot be insolvent, but if the firm is declared insolvent, the official Assignee can recover the share of the minor only.



- 5) Under what circumstances can a firm be dissolved by court ?
- 6) Effect of Public notice and nature of liability in case of retirement.
- 7) Provisions of transfer of interest under the partnership act
- 8) Discuss the various types of partnership basis of time & purpose.

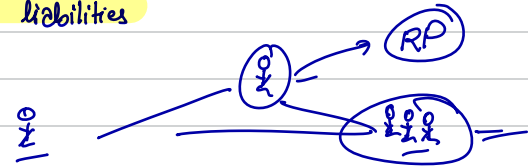


Q5) The Court under section 46 can intervene to dissolve the firm under the following circumstances

- (a) **Insanity (unsound mind)** - where an active partner, has become permanently unsound beyond recovery, then the other partners can dissolve the firm.
- (b) **Permanent incapacity** - where an active partner is physically disabled, that too of a permanent nature, then the other partners can call for dissolution.
- (c) **Misconduct** - where a partner is guilty of any conduct or words spoken or written not necessarily in the conduct of business, but brings bad repute to the firm, the partners can call for dissolution by misconduct.
- (d) **Persistent breach of Agreement** - where a partner fails to carry out business of the firm in a reasonable manner or is involved in activities like embezzlement, erroneous accounts, holding more cash in hand, misrepresenting accounts of the firm.
- (e) **Transfer of Interest** - where a partner has transferred his interest in the firm to other person without consent of all partners, the firm can be dissolved.
- (f) **Perpetual losses** - where the firm has incurred continuous losses over a substantial period the firm can be dissolved.
- (g) **Just & Equitable grounds** - where the court is of the opinion that
 - a deadlock in management
 - where the partners are not in talking terms.
 - Loss of substratum
 - Gambling on Stock Exchange

Q6) According to Section 32 of IPA 1932

- Retirement of a partner is valid only on a Public Notice given by the retiring partner, in the absence of a public Notice retirement is inoperative.
- On the date of Public notice, all liability for transactions post retirement extinguishes, however the partner continues to stay liable for transactions entered in the past, however a contract can be entered between third party, partners and retired partner discharging him from all liabilities



Q7

Section 24 transfer of Interest

deals with the right of a partner to transfer/sell/mortgage/pledge his interest in the firm in favour of the transferee, however the transferee shall have the right to share profits and losses but cannot

- (i) participate in the conduct of business
- (ii) inspect the books of Accounts
- (iii) makes copies of the books

Provided that, where such transferor retires, deceased or on dissolution of the firm, the transferee shall investigate the affairs of the business to determine the share in the property of the firm

Q8

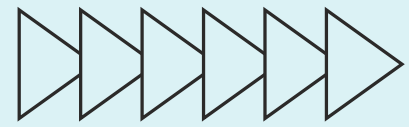
The following are the two kinds of partnership on the basis of time:-

Section 7 - Partnership at will when

- (i) no fixed period has been agreed upon for the duration of partnership and,
- (ii) there is no provision made as to determination of time of partnership

A partnership at will may be dissolved by any partner by giving notice in writing to all other partners of his intention.

Partnership for a fixed period - where a provision is made by a contract for the duration of the partnership is called fixed period partnership. It is automatically dissolved on completion of fixed period but if continued, it is regarded as partnership at will. It can be dissolved prior to fixed period by consent of all partners.



9) Liability of partners in case of misapplication of loan funds.

{ IMP for Case Study }

10) Rights & Liabilities of Nominal Partner ?

11) Define Implied Authority, and discuss acts outside implied authority.



Q9) According to Section 27 of, IPA 1932, where the funds of the firm are misutilised by partners of the firm the consequence shall be as follows:

- (a) where a partner has acted within his authority and received money or property of any third person and the same is in his custody or not.
- (b) such money or property has been misutilised by the partners of the firm or any of the partner

If the amount or property is acquired by the partners in the name of the firm, the firm shall be liable for repayment on misapplication

Exception

where a partner has acted outside his authority then the liability is personal and neither the firm nor the other partners are liable.

Q10

A Nominal Partner is a partner who lends his name to the partnership firm, does not contribute to the capital of the firm nor engaged in distribution of profits & losses but shall be responsible to the outsiders for all liabilities arising to the firm.

Q11

According to section 19 read with section 22 of the

IPA 1932.

An act of the partner is considered within
Implied authority when such transaction

- c (a) common in the course of business.
- u (b) performed in the usual manner
- N (c) name of the firm.

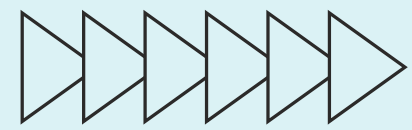
Acts within Implied Authority

- (i) he may sell and pledge property of firm
movable
- (ii) he may buy goods on account of partnership
- (iii) borrow or contract payment of debts on behalf of firm.
- (iv) he may draw, sign, endorse negotiable instrument on behalf of the firm.

Acts Outside Implied Authority

- (a) transfer Immoveable property
- (b) acquire Immoveable property
- (c) enter in a Partnership on behalf of firm
- (d) admit liability in a suit or proceeding on firm
- (e) withdraw a suit or proceedings which is in name of a firm.
- (f) Compromise or relinquish any claim or portion of any claim.
- (g) Submit any dispute in arbitration.
- (h) Opening the firm's Bank account in own name

IPL World Cup
final is played
between Delhi
and Bangalore



12) Difference between Partnership & co - ownership

13) Sharing of profit is not conclusive evidence in the creation of partnership

14) Discuss the provisions w.r.t. personal profits

15) Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932.



BASIS

PARTNERSHIP

CO - OWNERSHIP

Formation

Partnership always, arises out of a contract express or implied.

Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.

Implied agency

A partner is the agent of the other partners.

A co-owner is not the agent of other co-owners.

Nature of interest

There is community of interest which means that profits and losses must have to be shared.

Co-ownership does not necessarily involve sharing of profits and losses.

Transfer of interest

A share in the partnership is transferred only by the consent of other partners.

A Co - owner may transfer his interest or rights in the property without the consent of other co-owners.

FeINT

29

Q13) Mere Sharing of Profit does not create partnership
it is a **prima facie** evidence of creation
partnership

It is a **essential element of partnership** but
not a conclusive evidence of partnership

Under the following cases the sharing of profit
does not result in partnership relation

- by a **lender of money having share in the profits of the business.**
- by a **servant or agent on salary.**
- by a **widow or child of the deceased.**
- by a **previous owner of business as a consideration for sale of goodwill.**

The **absence of an agreement cannot result in a partnership**, even if there is sharing of profits.

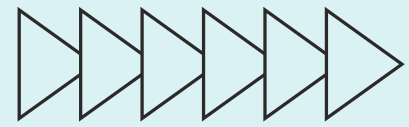
Q14 & Q19

(a) A partner in a partnership firm can make secret profit using:

- (a) name of firm
- (b) use of firm's property
- (c) transaction of the firm
- (d) use of connection of the firm.

it shall be the duty of the partner to account for such profit to the other partners of the firm.

(b) partners can do competing business but partners will be required to share all the profits arising from such business with the existing firm.



16) Explain the following term under The Indian Partnership Act, 1932:

(A) Partner by holding out

17) (i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

(ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?



Q16) According to Section 28 of the Indian Partnership Act 1932

A Partner by holding out is also known as partnership by estoppel. (prevented from denying)
Where a person by his conduct or by words spoken or written or by representation from other partners discloses himself to be the partner of the firm, shall become personally liable for any credit given to the firm on the basis of such representation

Q17 (i) According to section 38 of IPA 1932, where the partners have given a continuing guarantee under an agreement.

Unless otherwise stated under an agreement, the continuing guarantee shall be revoked on retirement, death or insolvency of any of the partners.

(ii) Goodwill as contained under section 14 of the partnership Act 1932, goodwill is easy to understand but difficult to define.

Goodwill is an asset of the firm and can be separately sold by the firm.

Goodwill can be termed as the unique feature of the business, which helps the business to attain more than normal profits from the other firms operating in the market.

30 mins

Resume 1:00pm

Indian Contract Act

Insta follow

GK

CA Shantanu Gupta

▶▶▶▶▶

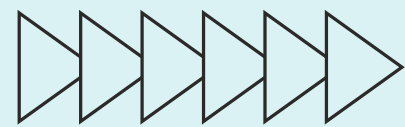
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✓ LLP All Questions done
✓ Negotiable All Questions done



In all Questions of LLP start by giving definition of LLP

1) Define following characteristics of LLP Act 2008

- Body Corporate
- Mutual Agency
- Foreign LLP's
- Artificial Legal Person

⑧

2) Difference between Partnership and LLP ?



Q1) LLP is a new form of doing legal business with limited liability, an alternative corporate business vehicle, where the liability of partners is limited and LLP itself is liable for its act, to the full extent of its Assets with flexibility of operation.

- Artificial Legal Person - A LLP is an artificial Legal Person created by law, it provides the LLP all rights of a natural person, other than right to marry, divorce or jailed for any offence. A LLP is created by law it is intangible but not fictitious.

- Body Corporate = LLP is a body Corporate as per section 3 of the LLP act since it is a registered entity having separate legal entity, an artificial person with limited liability having existence independent of its members.

- Mutual Agency = Acts performed by partners in the ordinary course of business, the firm is responsible for any wrongful activity or negligence in the performance of business of the firm. All partners are agent of the firm and not of other partners.

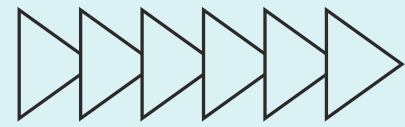
- Foreign LLP = As a limited liability partnership incorporated outside India or registered outside India which has a place of business in India. Foreign LLP can become a partner in Indian LLP.

Adesh Chok de Bhai

Q2	<u>Basis</u>	LLP	Partnership Firm
①	Regulating Act	LLP Act 2008	Partnership Act 1932
②	Body Corporate	LLP is a Body Corporate	It is not a body Corporate
③	Registration	Registration is Compulsory	Registration is Not Compulsory
④	Limited Liability	Limited upto the Capital contributed by partners	Liability of the Partner is unlimited
⑤	Name	The name of the LLP shall end with the words LLP	No guidelines. The partnership firm does not require to add words firm.
⑥	Separate Legal Existence	LLP is a body existing separately from its partners	Partner and the firm have no separate existence
⑦	Mutual Agency	Every Partner is the Agent of the LLP	Every Partner is the Agent of all other partners
⑧	Perpetual Succession	Death, insanity, insolvency of partners	Death, Insanity, insolvency of partner

does not affect
the firm

results in dissolution
of the firm



3) State rules regarding registered office of a limited Liability and change there in as per provisions of LLP act 2008.

4) Discuss the procedure for registration of a LLP act 2008 — Simple



Q3)

- According to Section 13 of the LLP Act 2008, every LLP is required to have a registered office capable of receiving all communications and notices as may be sent to the LLP by registrar.
- A document sent by registered post by designated partner or other partners containing the address of the LLP, addressed to the registrar of the state.
- Where a LLP changes its registered office the fact shall be communicated to the registrar of the state within 30 days of such change.
- If the LLP contravenes any provision the partners and the LLP are liable for a penalty of 500 per day maximum upto 50,000 each for LLP and its partner.

Ahmed

LLP-2

5) Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of The Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them.

Q4 & Q5

According to Section 11 & 12 of the LLP Act 2008, the registration of a LLP requires the following documents:

(a) two or more partners associated to carry on a lawful business and to share profits, shall form an incorporation document.

(b) the incorporation document shall be filed with the Registrar of state, where the registered office of the LLP is located, along with requisite fees.

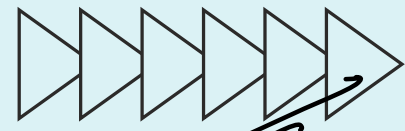
(c) The incorporation document shall be accompanied by a statement in prescribed form made by either a CA, CS, CMA or an Advocate, who is involved in the formation of the LLP confirming that all the matters incidental and ancillary to registration are complied with.

(d) The incorporation document shall contain

- name of LLP
- place of business of LLP
- the proposed business of LLP
- name and address of designated Partners
- name and address of other partners.
- such other matters as may be communicated

where the requirements provided above are complied with the registrar shall retain the incorporation document, and issue the registration certificate within 14 days of submission.

The registration certificate is conclusive evidence of registration.

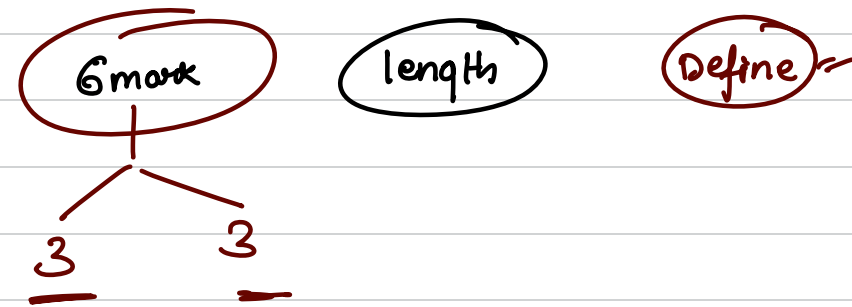


6) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

7) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

8) What do you mean by a Small Limited Liability Partnership?





Q6) LLP is an alternative corporate business vehicle, which provides the benefit of limited liability to its partners and has flexibility in its internal structure.

Limited Liability - Every partner of LLP has limited liability, towards the actions of the LLP. The liability is limited to the capital contribution and firm itself is liable to the full extent to its assets.

Flexibility of a partnership - The LLP manages and controls

its business operations by reorganising its internal structure based on the agreement mutually entered between partners. LLP is suitable for enterprises who want to establish a business having benefits of corporate bodies and flexibility of partnership.

Q7)

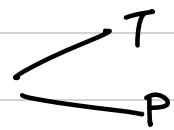
According to Section 5 of the Limited Liability Partnership Act 2008 -

Any person, an Individual or a body Corporate, can become a partner in the partnership firm other than -

(i) person of unsound mind ;

(ii) he is an undischarged insolvent or

(iii) he has applied to be adjudicated as an insolvent and his application is pending

Each topic 

CA Shantanu Gupta (YT)

LLP starts

Q8

Small Limited Liability Partnership is defined under section 2(1)(ta)

It means a Limited Liability Partnership —

- (i) the contribution of partners, does not exceed twenty five lakhs rupees or such higher amount as may be prescribed not exceeding five crores and
- (ii) the turnover of which, as per the statement of Accounts and Solvency, for the immediately preceding previous year, does not exceed forty lakh rupees or such higher amount as may be prescribed not exceeding fifty crores rupees.

OR

- (iii) meets such other conditions as may be prescribed



COMPANIES ACT

{ 13 MARKS }





1) Define OPC and State rules regarding forming an OPC

2) Define ultra vires. Effect of ultra vires.

3) Define doctrine of Indoor management. State its limitations.

4) Meaning of corporate veil, cases under which it can be lifted.



Companies Act 2013

Q1) According to section 2(62) of the Companies Act 2013, an one person company is a special type of private company with one member.

The rules for the formation of OPC is as follows:

- ① Only an Indian citizen, being a natural person, whether or not resident in India, can form an OPC in India, where he has stayed in India for 120 days in the immediately preceding previous financial year.
- ② The member shall appoint a nominee who shall also be an Indian citizen, whether or not resident in India, but has stayed in India for 120 days in the immediately previous financial year, other than minor.
- ③ A person can be member of only one OPC at a time however can be eligible to be nominee in another OPC.
- ④ The member can change the name of the nominee, such change does not result in alteration of the memorandum of Association.
- ⑤ There is no minimum capital prescribed for an OPC.
- ⑥ The OPC can indulge in any business activity, for the purpose profit only.

- ⑦ The OPC cannot perform business of an Investment Company or a Non banking financial corporation.
- ⑧ The OPC can freely convert itself into a public company or a private company other than a section 8 company.
- ⑨ The member is the director of the company.
- ⑩ The name shall include the words OPC or One Person Company.

eg.
$$\frac{\text{CSG (OPC) Pvt Ltd}}{\text{CSG Pvt Ltd (OPC)}}$$

9674362447 →

	AOA	MOA	Co	Ratify	
Case 1	x	x	UV	x	
Case 2	IV	UV	IV	✓	(Resolution)
Case 3	UV	IV	IV	✓	(SR in Meeting)
Case	UV	UV	IV	✓	(Resolution)

for even understanding

Q2) Doctrine of Ultra Vires, states that beyond the powers of the company.

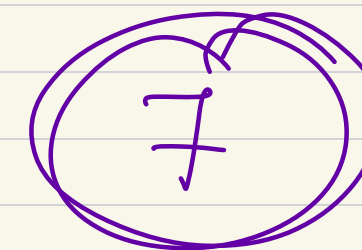
It is based on the popular case of Ashbury Railway Carriage vs Riche.

Any Activity which is beyond the scope and powers of the directors and the company are ultra vires to the company.

The Effect of an ultra vires transaction is as follows:- (Consequences)

- Any transaction which is Ultra Vires the memorandum is void i.e. without any legal effect.
- The Company can neither sue or be sued on an ultra vires transactions.
- Such a transaction is null and void in the eyes of law.
- An act which is ultra vires the company cannot be ratified even with unanimous approval of all members.
- However an act which intra vires the company, but ultra vires the director can be ratified by passing a resolution by members.
- If an Act is ultra vires the Articles, but intra vires the Company then can be ratified by Special Resolution in meeting.

- An Ultra Vires transaction is not binding on the company, any property acquired by company does not belong to it.
- The Outsider can bring an injunction order i.e. restrain order to restrict the use of any sum or property acquired by company under an ultra vires.
- where the company has utilised the money acquired to pay a lawful debt, the outsider steps into the shoes of such creditor in relation to company.



Q2)

The Doctrine of Indoor Management is an exception to the Doctrine of Constructive Notice.

It is based on the famous case of *The Royal British Bank vs Turquand*, also known as the Turquand's Rule.

The doctrine makes the internal management of the company responsible for affairs related to the ongoing operations within the company. The doctrine protects the outsiders from any negligence on part of the company. The company's indoor affairs are the company's problem.

Exceptions to the doctrine of Indoor Management

- ① Actual or Constructive Knowledge of irregularity — The rule provides no protection to an outsider, where actual or constructive knowledge of irregularity is visible.
- ② Suspicion of Irregularity — The doctrine in no way, protects a person who has been negligent in dealing with the company and failed to investigate irregularity.
- ③ Forgery — The doctrine of Indoor Management does not apply to forgery, since forgery against the company is a nullity.

Q4) Corporate Veil is the separate legal existence of the company independent of its members. The Corporate existence provides a shield which protects the members from any action against the company. It provides a corporate insulation to the members.

It was held in the case *Salomon vs Salomon Co Ltd.*

The exceptions to the corporate Veil are cases where the court can authorise lifting up the Corporate Veil to punish the ones who misutilised the provisions of the act:

(1) To determine the character of company i.e. whether its a co-enemy or friend, held in the case of *Daimler vs Continental Tyre & Rubber Co*, where the control was in the hands of the nationals which belonged to an enemy, the court lifted the Corporate Veil and suspended the operations

(2) To protect revenue/tax - held in the case of *Dinshaw Maneckjee Petit*, where the assessee in order to evade tax liability, formed sham private companies to loan out funds from these companies back to the assessee was treated as an arrangement to circumvent tax liability, as the veil was disregarded.

(3) To Avoid legal obligation - As held in case of *workmen employed in Associated Rubber factory*, where the company formed a subsidiary to transfer funds acquired by investment to avoid legal obligation of payment of bonus, the court investigated to determine that the subsidiary was formed merely to transfer profits from the books of the holding Co

and hence its status was revoked as the veil was lifted.

(4) Formation of subsidiaries to act as an agent - As held in case of *Merchandise Transport Limited vs British Transport Company* a subsidiary was used as agent to obtain a license on which the holding company was conducting business, since use of company without any physical establishment is prohibited under law the veil was disregarded

(5) Company formed for fraud/improper conduct - where company was used as a medium to adopt illegal or improper use to defeat the provisions of the law, the entity behind the veil was held responsible (*Calford Motors vs Horne*)

5) Define Section 8 company :-

- (a) Dividend
- (b) Privileges
- (c) Revocation of license
- (d) Action against violation



6) Holding / Subsidiary / Associate company

7) Define MOA. What are the contents of MOA?

Q5) According to Section 8 of the Companies Act 2013

A Non Profit Organisation is a company engaged in the field promoting art, science, culture, religion, commerce, sports, education etc, involved in promotion of public welfare.

(a) Such a company cannot declare dividend to its members any surplus arising from its activities shall be utilised in the promotion of its objectives.

(b) The privileges of a section 8 company are as follows:

- It operates under a license of the Central government
- on account of which shall not be required to attach the words "private" or "limited" to its name.
- no requirement of minimum capital, as nothing has been prescribed.
- can call a general meeting at a shorter notice of 14 days instead of 21 clear days.
- no requirement of minimum directors.
- independent directors are not required to be appointed
- there is no such requirement to compose a nomination and Remuneration Committee or Shareholders/Stakeholders redressal Committee.
- a partnership firm can be a member of a section 8 company. ✓

(c) The licence under which the NPO operates can be removed under the following circumstances.

P - does any activity against public welfare.

R - NPO fails to fulfill the requirements of the act

O - Objectives of its formation are violated

F - affairs of the NPO are conducted in a fraudulent manner.

(d) On revocation of license the registrar shall attach the words private or limited to its name, as the case may be.

The Central Government, here referred to as the Tribunal can order for winding up of the NPO or amalgamation with another NPO having similar objectives, after giving an opportunity of being heard.

The officers if involved in fraud shall be liable under section 447.

Q6) According to section 2(46) of the Companies Act 2013

A holding company is a company having one or more subsidiary companies.

A subsidiary company in relation to any other company means a company where such other company holds 2(87) —

(i) control over the composition of the Board of Directors or,

(ii) exercises or controls more than one half of the total voting power of such other company on its own or together with one or more subsidiary.

Associate company defined under 2(6) of the Company act-2013 means any company in relation to another company, holds significant influence over the affairs of the other company, includes a joint venture but does not include a subsidiary company.

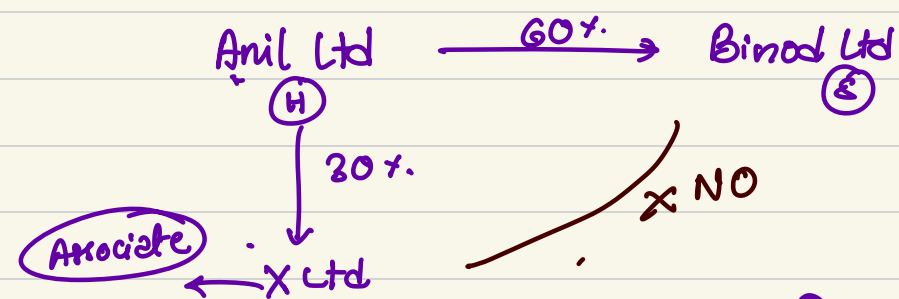
Provided that, significant influence shall arise from holding at least twenty percent of voting power

Provided further that, the voting power shall be understood in relation to

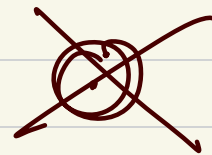
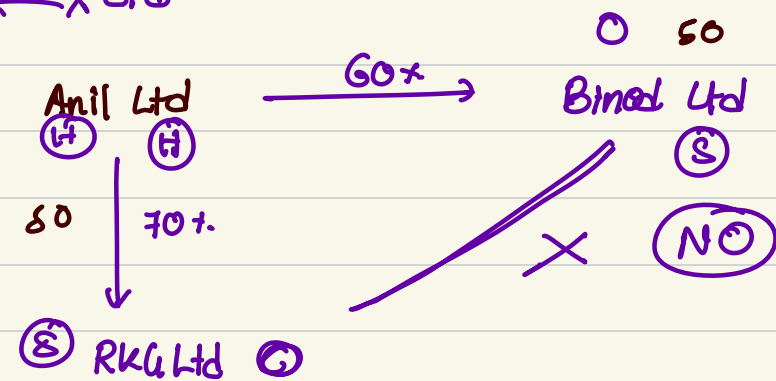
- Equity Share Capital
- Convertible Preference Share Capital

- ① convertible debt (NO)
- ② Preference Share Capital (NO)
- ③ Preference Sh Capital Not carrying VR (NO)
- ④ Preference Sh Capital with VR (Yes)
- ⑤ Convertible Pref Sh Capital (Yes)

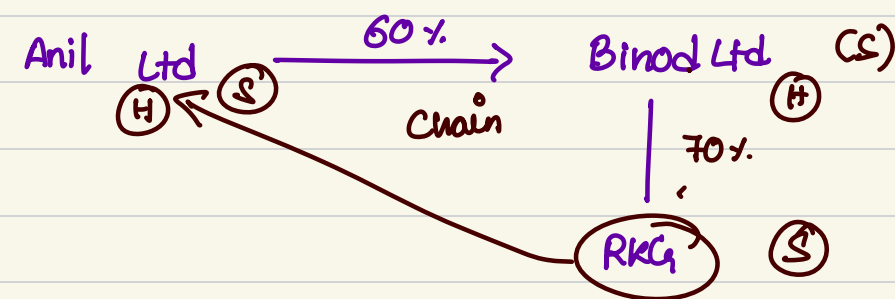
⑥



⑦



⑧



- Q7) 2(56) of the Companies 2013 defines, the Memorandum of Association. The MOA is the charter document of the company which defines the scope and powers of the company.
- It contains the objects for which company is formed
 - A company shall not cross such objects or violate

Such powers in the course of business.

- The shareholders should be aware as to where of the fact that where their money is invested and the risk of taking such investment.

Section 4

presents the content of the memorandum, which is

Included in the following clauses of the MOA.

- (a) the name clause which contains the name of company with or without the words private
- this clause does not apply to section 8 company.

In case of a one person company the word private shall be attached, with OPC.

- (b) the state in which the registered office of the company is located

- (c) the objects for which the company has been formed is contained in the Object Clause

If the name represent the trade of goods or services in which the company is engaged then with change of trade the name shall be changed in 6 months.

- (d) the liability of the members of the company whether limited by shares, or guarantee or unlimited shall be stated in the memorandum.

- (e) the amount of capital with which a company is registered i.e. Authorized capital is contained this clause

- (f) the detail of the first subscribers of the memorandum alongwith their holding in the company is contained in the association clause.

In case of an OPC, the name of the nominee shall be contained in the association clause, however change in nominee does not alter the memorandum.

NROLAC Points

18 May

10:00am



8) Define :

- ~ Small co.
- ~ Foreign co.
- ~ Listed & Unlisted
- ~ Government co.
- ~ Private co. =

9) Discuss the procedure for registration of company.

10) What are the different classification of capital?



Unlisted Company is a company whose securities are not listed on any recognised stock exchange in India.

Q2) (a) According to Section 2(85) of the Company Act 2013

A small company is a company other than public company

(i) where the paid up share capital does not exceed four crores or such higher amount as may be prescribed not exceeding ten crores and;

(ii) the turnover as per the balance sheet of the immediately preceding financial year does not exceed forty ^{crores} or such higher amount as may be prescribed not exceeding hundred crores.

and it does not include

- holding & subsidiary 4674362447
- section 8 company
- company registered under special act.

(b) According to section 2(42) of Companies Act 2013 a foreign company means a company incorporated outside India but has a place of business in India

- either physically, electronically or by an Agent or
- by any other means.

(c) According to section 2(52) of the Companies Act 2013 a listed company is a company whose securities are listed on any of the recognised stock exchanges in India.

Provided that, any company which is under the process of getting listed, such a company shall be treated as a listed entity. (eg. boat OYO)

Provided further that, entity whose securities are those mentioned under 2(81), of the Companies Act shall be categorised as listed entity. (eg. Hyundai)

Also that, a company which is in the process of listing such class of security [other than 2(81)] shall be treated as an unlisted company

(d) A company shall be treated as a government

company under section 2(45) of the company act

where not less than fifty one percent of the total

paid up share capital is held by

- Central Government
- State Governments or
- a combination of CG and SG or one or more state government and a subsidiary of government is also a government company.

Provided that, the total paid up share capital shall mean total voting power.

(e) According to Section 2(68) a private company shall mean

- a company having minimum paid up capital as prescribed
- and the articles shall provide the following restrictions

- restricts transfer of securities

- maximum members shall not exceed two hundred, exception OPC it is one.

Provided that

- employees who acquired shares during employment, are holding such securities. and
- employees whose employment has ceased to occur and continue to hold securities acquired during such employment.
- joint holders shall be considered as one.

- Prohibits issue of shares to public.

6/7 =

Q9) According to Section 7 of the Companies Act 2013, the following procedure shall be followed for incorporating the company

(1) Filing of the following documents with the registrar

✓ the memorandum of association and articles of association, signed by subscribers of memorandum

✓ a declaration by a person who is engaged in the formation of the company (an advocate, a CA, a CS or CMA) and by a person named in the articles of the company as a director, that all requirements in this act for registration has been complied with.

✓ a declaration from each director and first members stating that:

C - all information in the memorandum of association and articles is correct and fair.

F - none of members or directors have been involved in any fraud in last five years related to ^Ppromotion, ^Fformation or ^Mmanagement of the company

O - has not committed any offence related to ^Ppromotion, ^Fformation or ^Mmanagement of the company.

✓ address for correspondence till office registered

✓ the particulars (names, surnames, residential proof, nationality) of every subscriber of memorandum in case of a company details as may be required.

✓ the particulars (names, surnames, residential proof, nationality, and director identification number) of the persons whose names are present in the articles of association.

✓ disclosure of directorship interest, if any.

(2) The registrar on the basis of documents submitted above, shall grant the certificate of incorporation containing the corporate identification number of the company.

(3) The certificate is a conclusive evidence of registration

(4) Companies shall maintain all original copies of document submitted for registration.

Case Study 6

Company has submitted false information during registration?
Action ✓

① where the members and officers have submitted information

which contains any incorrect material fact or have suppressed any material facts at the time of incorporation, the registrar shall punish such officers involved under section 447.

② where the registrar receives any intimation, after incorporation of the company and commencement of business, that there has been material misstatements of facts, the registrar shall punish members involved under section 447 and

the company shall be liable for action as deemed necessary by tribunal, after giving an opportunity of being heard. The tribunal can pass following order

(a) a change in the regulation and management of the company as required in public interest or

(b) direct liability to be unlimited or

(c) removal of name of the company or

(d) order for winding up of the company or

(e) pass such orders as it may deem fit.

Q10) The Capital of the company can be classified as follows.

All India Test

ICAI Level 1
Our Level 3

(a) Nominal or Authorised or registered Capital - It is the maximum amount with which a company is registered in the memorandum of association. It is amount estimated by the company for its functioning.

(b) Issued Capital - It is the part of authorised capital issued by the company in the market for subscription, it is disclosed in the financial statements.

(c) Subscribed Capital - Subscribed capital is the amount of shares subscribed by the people, i.e. applications which were duly allotted with securities.

(d) Called Up Capital - It is the total amount of face value called up by the company.

(e) Paid Up Capital - It is the total amount on shares paid up by the shareholders to whom shares are allotted.

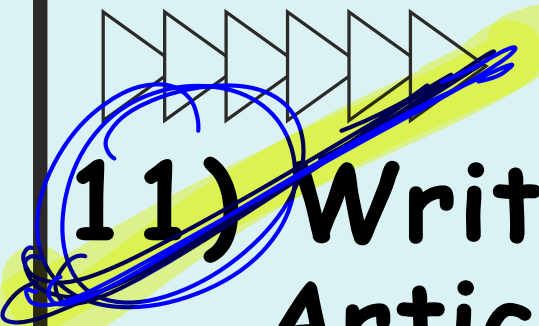
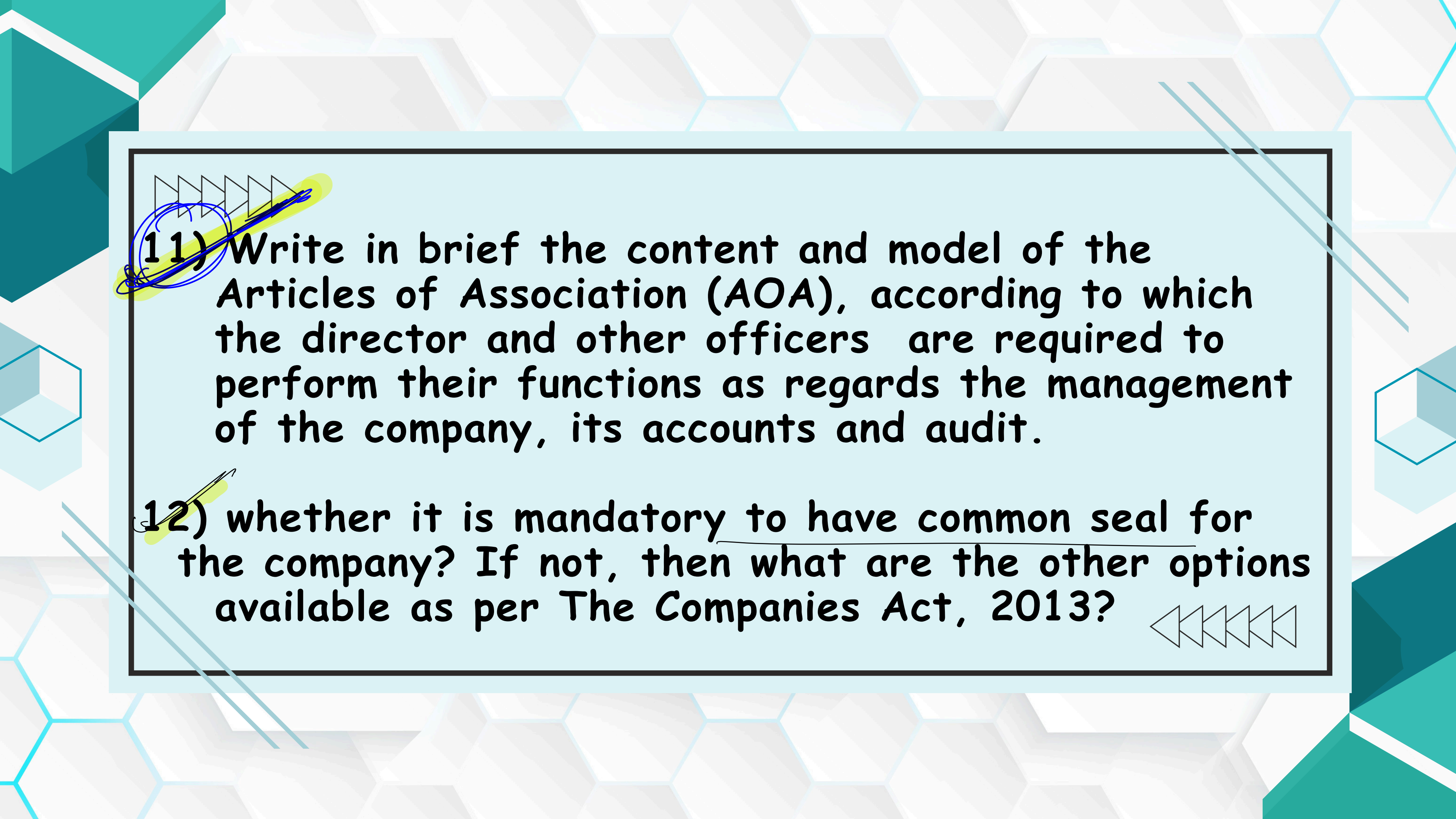
How to Analyse
Marks

Less than 20 marks - Serious Problem
(Revision) +
try to increase speed

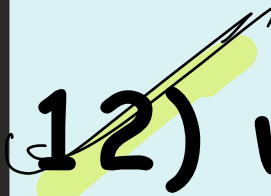
20 marks - 30 marks - Satisfactory
Just Practice
2 Case Study
+
1 DQ Learn
+
Revise

30 marks - 50 marks - On track
Continue with
basics you
are doing
well

50 + marks - Excellent
Just do not
stop.



11) Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit.



12) whether it is mandatory to have common seal for the company? If not, then what are the other options available as per The Companies Act, 2013?



Q11) Articles as defined u/s 2(5) of the Companies Act 2013 are the byelaws of the company.

It is the set of rules and regulations, which are designed for the internal management of the affairs of the company.

The articles are subsidiary to the memorandum

The article is a business document hence designed carefully and followed strictly

Section 5, of the Companies Act 2013 contains provisions and model for the articles of Association

- Contains regulations of the articles of the company for the management of the company.
- Articles can contain matters given under companies rules also additional matters can be included.
- Articles can contain an entrenchment provision (to protect something) such that articles can only be altered to make them more restrictive in nature.
- Entrenchment can be included at the time of incorporation or at any time after such incorporation in case of a private company by consent of all members whereas in case of a public company by a special resolution, the registrar shall be informed on including such entrenchment.

• Forms of articles, can be adopted from table F, G, H, I, J in Schedule I of the Companies Act 2013

• Company registered prior to this act shall adopt articles as per the Companies Act 2013.

Q.12) A Company being an artificial person for the purpose of authentication of documents requires a common seal. 87664 64954

The Common seal is the official signature of the company. Section 4 has been amended by Companies Amendment act 2015, to provide that a common seal is optional and the companies can opt for signature of two directors or a director and a company secretary, where appointed.

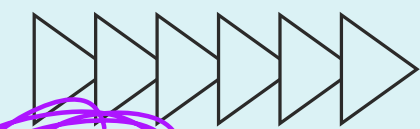


NEGOTIABLE INSTRUMENTS ACT

{ 10 MARKS }

14

Q674362u47



- 1) Under what circumstance a promissory note is dishonoured without being presented?
- 2) What are Negotiable Instruments ? Explain its essential characteristics under Negotiable Instrument Act 1881 ?
- 3) What is a cheque under the Negotiable Instrument Act 1881 ? Who are the parties! What are these essentials elements of Cheque



Q2

Negotiable Instrument is an instrument (which is a document in writing) which is freely transferable from one person to another by mere delivery or by indorsement and delivery.

Negotiable Instruments include

Cheque

Bills of Exchange and

promissory Note

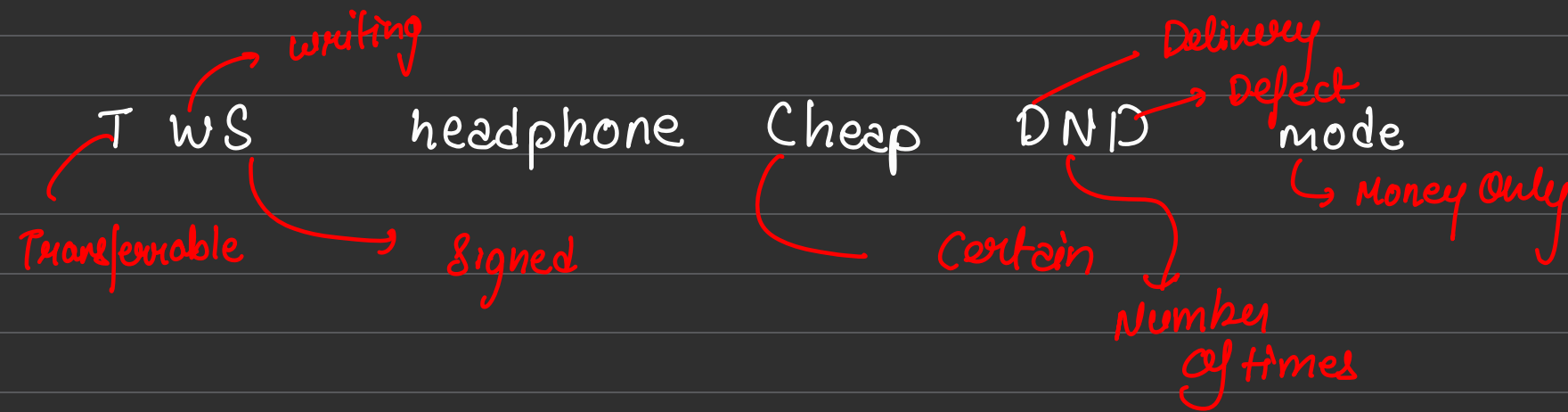
(Section 13)

The property of the instrument is transferred to a bona fide transferee.

Essential Characteristics of Negotiable Instruments are as follows.

- It is freely transferable from one person to another.
- It is in writing
- It should be stamped or signed

- Holder's title is free from all defects
- The payee, amount, time of payment shall be certain
- It can be transferred any number of times before maturity
- It is an unconditional promise to pay money and money only.
- The instrument shall be delivered to holder



Q3)

According to Section 6 of Negotiable Instrument Act 1881

A Cheque is a **bill of exchange** which is **drawn on a specified banker** and is payable on **demand** and it **includes** an **electronic image** of a cheque (**truncated cheque**) and cheque in **electronic form**.

Parties involved in a cheque :

Drawer - The person who draws the cheque

Drawee - The bank on whom the cheque is drawn, he pays amount on the cheque.

Payee - The person named in the instrument (ie. the person in whose favour the instrument is drawn)

Essential Elements of Cheque

- ① A cheque is always drawn on a specified banker.
- ② A Cheque is always payable on demand
- ③ It is in writing and signed by the drawer of the instrument.
- ④ The order to pay is always on demand and un-conditional
- ⑤ The sum should be certain
- ⑥ The Order is to pay money only.
- ⑦ All the parties involved in the cheque shall be certain.

instrument

BOE

cheque

PN



4) Difference between Promissory Note and Bills of Exchange ?

5) State the rules of compensation in case of dishonour of instrument.

②

⑥

6) what do mean by foreign bill and inland bill ?

7) what do you mean by Ambiguous instrument and inchoate instrument?



Basis	Bills on Exchange	Promissory Note
Definition	A Bill of Exchange is an instrument in writing is an unconditional order , signed by the maker, directing a certain person to pay a certain sum of money , to the order of a person or holder of the instrument	A Promissory Note is an instrument in writing containing an unconditional undertaking , signed by maker, to pay a certain sum of money to the order of the instrument or bearer of the instrument .
Nature of Instrument	It is an order for making payment	It is a promise to pay.
Parties	In a Bill of Exchange there are 3 parties Drawer Drawee Payee	In a Promissory note there are two parties Maker Payee
Acceptance	A BOE requires acceptance from the drawee	In case of a PN Acceptance is not required

Payable to
bearer

BOG can be made
payable to bearer
of the instrument
however not on
demand.

A promissory
Note cannot
be made to
bearer it is
only issued
by RBI in
form of
Currency
Note

Q5)

According to section 117 of the Negotiable Instrument Act 1881

In case of dishonour of any instrument by any party liable to the holder or any endorsee, shall be determined as follows:

(a) the holder is entitled to the amount upon the instrument, together with noting charges, protesting charges if any, and presentment charges.

(b) when the person being sued for dishonour resides in a country different from that at which the holder is present, he is entitled to the amount at current exchange rate

(c) an endorser who, being liable to pay amount due on the dishonoured instrument has paid the same to the indorsee shall be entitled to 18% interest on such amount paid

exchange rate.

(d) when the person sued for dishonour is an endorser residing at a different place than the indorsee, the endorser shall discharge payment at current

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, such bill shall be drawn on demand and if dishonoured

the dishonouring party shall be liable as in case of the original bill.

Q6)

According to Section 11 & 12 of the Negotiable Instruments Act 1881

Inland Instruments

A promissory note, bill of exchange or cheque drawn or made in India, on a person resident in India or payable in India is an Inland Instrument

Example: Anil of India drew a bill in Mumbai, on Ramesh an Indian Resident payable in London.

Foreign Instruments

A promissory note, bill of exchange, cheque which is drawn outside India on a drawer in India, but on a person resident outside India and also payable outside India is a Foreign Instrument.

Example 1. An Instrument drawn in London.
2. An Instrument drawn in Mumbai on James Resident of Sri Lanka, payable in Sri Lanka.

Q7) Inchoate Instrument

It means an instrument that is incomplete in certain respects. The drawer/maker/acceptor/indorser of a negotiable instrument may sign and deliver a blank instrument, which either completely blank or is incomplete, is called an Inchoate Instrument.

This instrument gives the holder the power to complete the instrument and a bonafide holder in due course can complete the instrument upto the value of the stamp affixed on it.

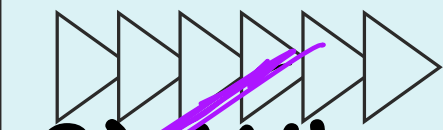
The principle is based upon estoppel.

The holder of such instrument cannot recover the amount in excess of the amount intended by the person signing the instrument.

Ambiguous Instrument

Where an instrument may be constructed either as a promissory note or bill of exchange, the holder may at his own selection treat it as either of the above. However, once the selection is made the same cannot be reversed.

Full day Marathon 19th → April 12:00pm



8) What is a Bill of Exchange? Also, explain its essential characteristics under the Negotiable Instruments Act, 1881.

9) A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act, 1881?



Q.10.

What are the consequences of dishonour of a cheque? Which cases liability of section 138 does not apply.

Q.8)

According to Section 5 of Negotiable Instrument Act 1881

A Bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of such person or to the bearer of the instrument.

Features of a Bill of Exchange

- (i) It must be writing
- (ii) Express order to pay or bearer of instrument.
- (iii) drawer must sign the instrument.
- (iv) the order must be definite and unconditional
- (v) The sum must be certain.
- (vi) The order to pay money only
- (vii) It must be stamped.
- (viii) The drawer, drawee and payee shall be certain.

Q1 & Q2

Presentment refers making the instrument available for payment on the due date. However under the following circumstances the instrument can be dishonoured (Section 76).

(4/3)

POINT

- (i) If the maker, drawee or acceptor ^(I) intentionally prevents the presentment of the instrument
- (ii) If the instrument is payable at his ^(P) place of business and such place is closed during business hours
- (iii) If the instrument being payable at some ^(O) other specified place, neither he nor his agent is present at such other place.
- (iv) If the instrument is not payable at any particular place, and the ^(N) person is not to be found.
- (v) where the drawee or acceptor has paid a part of the amount due on the instrument, his right to excuse payment on failure of presentment is discharged.
- (vi) If the drawer could not have suffered any loss or damage due to absence of presentment

Imarks

Q10

Dishonour of Cheque 7 marks 138/139/140
4-5 marks 138/139

According to section 138, 139, 140 which is applicable in case of dishonour of a cheque states the following

Condition for dishonour

- where a cheque is dishonoured due to insufficiency of funds or stop payment
- The payee on receiving intimation from the banker, shall inform the drawer within 30 days, and the drawer shall be required to pay amount due on dishonour within 15 days from such intimation.
- Provided failure to make payment within 15 days shall involve penalty under section 138.

Penalty for dishonour

- the drawer shall be liable for imprisonment upto 2 years or
- a penalty of twice the amount of cheque or both.

When section 138 shall not be applicable

(4)

- cheque is presented in the bank after the validity period of 3 months.
- the cheque has been dishonoured for reasons other than stop payment or insufficiency of funds.
- the payee fails to inform the drawer within 30 days about the fact of dishonour.
- the drawer makes the payment of the cheque within 15 days.

- (e) The cheque has been ^{drawn} for consideration which is illegal or gift or in form charity section 138 does not apply.

Section 139

The holder of a cheque is presumed to have acquired the cheque for a valid debt or liability however such presumption is rebuttable

RE BUTT ABLE

Section 140

(iske khilaf bol sakte hai with Proof)

It shall be no defence in a prosecution of an offence under 138, that the drawer was unaware about the amount standing to the credit of the account.



Thank
You