

CA Foundation – Jan 26

Top 75 Most Expected Questions

Q1 - MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

3m, D23

Ans - "Inactive company" means a company which has not been carrying on any business or operation or has not made any significant accounting transaction during the last two financial years or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]

"Significant accounting transaction" means any transaction other than—

- a) payment of fees by a company to the Registrar;
- b) payments made by it to fulfil the requirements of this Act or any other law;
- c) allotment of shares to fulfil the requirements of this Act; and
- d) payments for maintenance of its office and records.

[Explanation (ii) to Section 455 of the Companies Act, 2013]

In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.

Q2 - What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013?

7m, MTP1, M25

Ans - Filing of the documents and information with the registrar: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated—

- i) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- ii) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

iii) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that

- he is not convicted of any offence in connection with the promotion, formation or management of any company, or
- he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
- and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

iv) the address for correspondence till its registered office is established;

v) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

vi) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and

vii) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

03 - JV Limited borrowed a secured loan of 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to 1 crore. The bank released the loan amount in two instalments of 1 crore and 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of 3 crore for repayment of its lawful debts. The utilisation of the remaining 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan.

4m,MDTP7,10, 4m,S24, 4m,MTP1,J25

Ans - Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, borrowing more than ₹1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore.

Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for Rs. 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.

Ultimately, the company has no remedy available to recover the balance amount of loan of Rs. 1 crore as the spending thereof is not traceable.

04 - The Memorandum of Association is a charter of a company". Discuss. Also, explain in brief the contents of Memorandum of Association.

6m,D19, 6m,MTP2,Ju22, 6m,MTP1,D21

Ans - The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

Contents of the memorandum: The memorandum of a company shall state—

- a) the name of the company (Name Clause) with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.
- b) the State in which the registered office of the company (Registered Office clause) is to be situated;
- c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause);
- d) the liability of members of the company (Liability clause), whether limited or unlimited
- e) the amount of authorized capital (Capital Clause) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
- f) the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

05 - Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth Rs. 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of Rs. 1,50,000/-. Mr. R informed the company that he had already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act, 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

7m,MDTP4, 7m,MTP3,Ju24, 4m,D22, 3m,MTP2,D23**Ans - Doctrine of Indoor Management**

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect the external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

i) Fate of the suit and the liability of Mr. R towards the company:

In the instant case, Mr. R is not liable to pay the amount of Rs. 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management in no way rewards those who behave negligently. It is the duty of the outsider to make the necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

06 - Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances.

5m,MDTP10, 5m,S24 OR

Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013.

6m, Ju23, 6m, MTP2, D23 OR

There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate.

6m, D18

Ans - Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. Due to this, members of a company are shielded from liability connected to the company's actions.

Lifting of Corporate Veil: The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- 1) To determine the character of the company** i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- 2) To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate identity.
- 3) To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.
- 4) Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
- 5) Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

07 - Mr. Rajeev, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by

the companies was handed back to Mr. Rajeev as a pretended loan. This way, Mr. Rajeev divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

7m,MDTP6, 7m, MTP2, S24, 6m,MTP1,Ju23, 4m,MTP1,Ju21, 6m,MTP2,Ju21, RTP,Ju19, 6m,MTP1,Ju19, 4m,MTP2,Ju19, 4m,MTP1,D18, 4m,MTP1,Ju18

Ans - The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate facade and hold the persons in control of the management of its affairs liable for the acts of the company.

Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

2. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in Re Sir Dinshaw Maneckjee Petit and Juggilal vs. Commissioner of Income Tax.

OR

In Dinshaw Maneckjee Petit case it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

In the instant case, the four private limited companies were formed, the assessee, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the

assesse himself. Therefore, the whole idea was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

Hence, Rajeev cannot be regarded as separate from the private limited companies he formed.

08 - Who are promoters as per the Companies Act, 2013?

Ans - The Companies Act, 2013 defines the term "Promoter" under section 2(69) which means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise;

(c) or in accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

In simple terms we can say,

- ✓ Persons who form the company are known as promoters.
- ✓ It is they who conceive the idea of forming the company.
- ✓ They take all necessary steps for its registration.
- ✓ It should, however, be noted that persons acting only in a professional capacity

Example - the solicitor, banker, accountant etc. are not regarded as promoters.

09 - Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

3m,MDTP5, 3M,MTP1,Ju21, 3m,MTP1,Ju20

Ans - Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

10 - Briefly explain the nature of shares under the Companies Act, 2013 with reference to legal position of shareholders, treatment as movable property, and requirement of numbering.

7m, MTP2, S25

Ans - Nature of shares: Section 2(84) of the Companies Act, 2013 defines the term 'share' which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding a share is entitled.

Share is an interest in the company: Farwell Justice, in *Borland Trustees vs. Steel Bors. & Co. Ltd.* observed that "a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount". The shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.

Shares are a movable property: According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Shares shall be numbered: Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

11 - The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is Rs. 9.5 crore (95 lakh shares of Rs. 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of Rs. 5 crore in the form of 5 lakh shares of Rs. 100 each. Z Private Limited claimed the status of a subsidiary company of Rs. 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?

7m,MDTP6, 4m,D23, 7m,MTP2,S24, 4m,MTP1,D23

Ans - Government Company [Section 2(45) of the Companies Act, 2013]: Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- i) the Central Government, or
 - ii) by any State Government or Governments, or
 - iii) partly by the Central Government and partly by one or more State Governments,
- and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

12 - Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are

holding till date. Now company wants to convert itself into a private company. State with reasons:

- a) Whether Jagannath Oils Limited is required to reduce the number of members.
b) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?

7m,MDTP2, RTP,Ju22, 4m,MTP2,D21

Ans - According to Section 2(68) of Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- i) restricts the right to transfer its shares;
ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- a) persons who are in the employment of the company; and
b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

- iii) prohibits any invitation to the public to subscribe for any securities of the company;

a) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to be employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.

b) On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

13 - Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework?

RTP,M25, 6m,MDTP1,5,7,10, 6m,S24, 6m,MTP1,Ju24

Ans - The laws in the Indian legal system could be broadly classified as follows:

Criminal Law: Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (Crpc). The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes. Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Civil Law: Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort. Some examples of civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.

Common Law: A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

Principles of Natural Justice: Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law. Nemo judex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally meaning "hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

14 - What is the structure of Indian Judicial System, and what is the hierarchy of courts in India? 6m,MDTP6, 6m,MTP2S24, 6m,J25 OR

What do you understand by Indian Judicial System & what are its various functions? RTP,Ju24 OR

Explain the hierarchical structure of Indian Judicial System. Describe the powers & functions of Supreme Court, High Courts, District Courts and Metropolitan Courts.

RTP,S25 OR

What is the significance of Supreme Court & High Court in the Indian judiciary? 6m,MTP2,S25, 6m,MDTP1, ICAI Module, 6m,MTP2,J24, 6m,RTP,J25

Ans - When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

The functions of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

i) Supreme Court

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

ii) High Court

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

iii) District Court

Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.

On the basis of a pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore. On the basis of territorial Jurisdiction i.e. courts have power to control the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

iv) Metropolitan courts

Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

15 - Explain the advantages of the LLP form of business. How does its legal structure make it a flexible and preferable business model for entrepreneurs? Also, discuss the legal capacities an LLP acquires upon registration. 6m, MTP2, M25

Ans - Advantages of LLP form: LLP form is a form of business model which:

- a) is organized and operates on the basis of an agreement
- b) provides flexibility without imposing detailed legal and procedural requirements.
- c) Easy to form
- d) All partners enjoy limited liability
- e) Flexible capital structure
- f) Easy to dissolve

Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

On registration, a LLP shall, by its name, be capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

16 - Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. (4m)

(ii) What do you mean by a Small Limited Liability Partnership? (2m)

RTP, J26, 6m, MTP1, S25, RTP, M25, 6m, MDTP7, 10, 6m, MTP1, J25, 6m, S24

Ans - (i) Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008)

(1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —

- (a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under Trade Marks Act, 1999, as is likely to be mistaken

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

(3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) Small Limited Liability Partnership [Section 2(1)(ta)]

It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

17 - State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008?

RTP, S24

Ans - Registered office of LLP and Change therein (Section 13)

i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

- ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ` 500 for each day during which the default continues, subject to a maximum of ` 50,000 for the LLP and its every partner.

18 - Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008. **ICAI Module**

Ans - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- iii) To have registered office in India to which all communications will be made and received;
- iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.
- vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- vii) LLP Name.

19 - Mr. Anil drew a bill of exchange in Kolkata on Mr. Bimal, a resident of New York, and made it payable in Delhi. On maturity, the bill was dishonoured, and Anil sued Bimal in India claiming interest at the rate of 18% as applicable in Kolkata. Bimal contended that his liability was governed by New York law, where the rate of interest was only 6%.

Decide the liability of Bimal with reference to the provisions of the Negotiable Instruments Act, 1881.

RTP, J26

Ans - Section 11 of the Negotiable Instruments Act, 1881 defines an inland instrument as a promissory note, bill of exchange, or cheque drawn or made in India and either payable in India or drawn upon a person resident in India. Section 12 provides that any instrument which is not an inland instrument is deemed to be a foreign instrument.

Further, Section 134 of the Act states that in the absence of a contrary contract, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated by the law of the place where the instrument is made, whereas the liability of the acceptor or indorser is determined by the law of the place where the instrument is payable.

Here, the bill was drawn by Anil in Kolkata on Bimal, a resident of New York, and was made payable in Delhi. On dishonour, Anil claimed interest at 18% as per the law prevailing in India, while Bimal claimed that his liability should be limited to 6% under New York law.

Since the bill was drawn in India but made payable in Delhi, the liability of the acceptor (Bimal) is governed by Indian law, i.e., the law of the place of payment. Therefore, Bimal is liable to pay interest at 18% as claimed by Anil.

20 - Explain the legal provisions regarding presentment for acceptance of a bill of exchange under the Negotiable Instruments Act, 1881. What are the consequences of failure to present a bill for acceptance? Also, distinguish it from the presentment of a promissory note for sight.

7m, MTP1, S25

Ans - Presentment for acceptance [Section 61 of the Negotiable Instruments Act, 1881]: A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight [Section 62]: A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after

reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default.

21 - Anjali purchased various cosmetic products worth Rs. 15,000 during the last week from Sushil, a shopkeeper, on credit of one month. After a fortnight, she makes out a blank promissory note, signed it and delivered to Sushil who further endorsed it to Manish for the payment of his dues. Manish, who is holder in due course, filled up the due amount of Rs. 17,000 from Sushil and on maturity presented it to Anjali for payment but she refused to pay because the amount filled up is more than the agreed amount of Rs. 15,000. It is to be noted that the amount of Rs. 17,000 is covered by the stamp affixed on it. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether Anjali is liable to honour the promissory note to Manish for Rs. 17,000?

Sim, 4m, MTP2, M25, 4m, J25

Ans - Section 20 of the Negotiable Instruments Act, 1881 reads as "Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder".

In the instant case, Anjali is not liable to honour the promissory note to Manish for Rs. 17000. She is liable only for Rs. 15000.

Note: ICAI Answer on this question is wrong, Anjali is liable for 17000.

22 - Sachin bought 1000 Kg rice from Saurabh for Rs. 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin?

7m, MTP1, M25, RTP, Ju24

Ans - Rules as to compensation (Section 117 of the Negotiable Instruments Act, 1881):

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

On the basis of the above provisions of law and facts of the case, Saurabh has right to claim price of rice plus fees of advocate plus interest @18% p.a. from the date of payment until tender or realisation thereof.

23 - Manoj purchased some goods from Sagar. He issued a cheque to Sagar for the sale price on 14th June, 2023. Sagar presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable?

RTP, M25, RTP, S24

Ans - By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

When section 138 shall not apply: unless the below given conditions are complied with—

(a) Cheque presented within validity period: The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) Demand for the payment through the notice: the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) Failure of drawer to make payment: the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

In the instant case, Manoj issued a cheque to Sagar for payment of the price of goods purchased from him. When Sagar presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sagar should have to make a demand of payment by giving a notice in writing to Manoj upto 18th July, 2023. In case, Manoj failed in making the payment within fifteen days of the receipt of the said notice, Sagar could sue under section 138.

24 - 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?

7m,MTP2,S25, RTP,S25, RTP,M25, 7m,MDTP7,9, 7m,MTP1,J25, 7m,Ju24

Ans - As per Section 76 of the Negotiable Instruments Act, 1881:

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- a) i)** If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- ii)** if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- iii)** if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
- iv)** if the instrument not being payable at any specified place, he cannot after due search be found;

- b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
- he makes a part payment on account of the amount due on the instrument,
 - or promises to pay the amount due thereon in whole or in part,
 - or otherwise waives his right to take advantage of any default in presentment for payment;
- d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

25 - Explain cheque in Electronic Form & Truncated Cheque?

Ans - Cheque in the electronic form-means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;

Note- For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.

(b) "a truncated cheque" means a cheque which is truncated during a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

26 - Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal to Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Advise Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm.

3m,MDTP10, 4m,MDTP7, 4m,MTP1,J25, RTP,J25, 3m,S24

Ans - Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co.

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

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

7m,MTP2,M25, 4m,MTP1,D22, 6m,MTP2,D21, RTP,D20, 4m,MTP2,Ju19, RTP,D18, 4m,MTP2,D18, 4m,MTP1,Ju18, ICAI Module

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

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

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

- i) Name of the partnership firm.
- ii) Names of all the partners.
- iii) Nature and place of the business of the firm.
- iv) Date of commencement of partnership.

- v) Duration of the partnership firm.
- vi) Capital contribution of each partner.
- vii) Profit Sharing ratio of the partners.
- viii) Admission and Retirement of a partner.
- ix) Rates of interest on Capital, Drawings and loans.
- x) Provisions for settlement of accounts in the case of dissolution of the firm.
- xi) Provisions for Salaries or commissions, payable to the partners, if any.
- xii) Provisions for expulsion of a partner in case of gross breach of duty or fraud.

28 - Explain 'Partnership for a fixed period' MDTP2, RTP,D23, 2m,MTP2,D2, 2m,Ju22

What do you mean by 'Partnership at will'?

2m,D20, RTP,Ju20

Ans - Partnership for a fixed period (Indian Partnership Act, 1932): Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

Partnership at will under the Partnership Act, 1932 , According to Section 7 of the Act, partnership at will is a partnership when:

1. no fixed period has been agreed upon for the duration of the partnership; and
2. there is no provision made as to the determination of the partnership.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

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

29 - What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932? RTP,M25, 4m,MDTP5, 4m,MTP1,S24, 4m,MTP2,D23, 4m,D22

Ans -

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	There is community of interest	Co-ownership does not necessarily involve

interest	which means that profits and losses must have to be shared.	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.

30 - Rahul and Kapil are partners in the firm M/s Saxena Marble House. Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account. Rahul did not consent to Kapil before acquiring of shares. Referring to the provisions of the Indian Partnership Act 1932:

(a) Whether the shares purchased by Rahul constitute the property of firm?

(b) What would be your answer if Rahul debits himself in the accounts books of firm and became a debtor to the firm?

7m, MTP1, M25

Ans - According to section 14 of the Indian Partnership Act, 1932, 'property of the firm' means 'partnership assets', 'joint stock', 'common stock' or 'joint estate' of the firm. The property of the firm includes:

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
- (iii) Goodwill of the business.

Further, if the contrary intension does not appear, the property acquired with the money of the firm is deemed to have been acquired for the firm.

In the instant case, Rahul and Kapil are partners in the firm M/s Saxena Marble House. Without the consent of Kapil, Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account. The answers are:

(a) As shares were purchased from the money of firm, shares will be deemed to be the property of firm.

(b) In case Rahul debits himself in the accounts books of firm as became a debtor of the firm, shares will not be deemed the property of the firm. They will be the personal property of Rahul.

31 - Amit and Ajay started the business of wholesale trading of sugar. For this purpose, they contributed Rs. 3,00,000 and Rs. 1,00,000 respectively. Partnership deed was perfectly prepared but clause regarding share of profit was not mentioned in the deed. Due to the heavy rain, stock of sugar was spoiled, and firm incurred the loss of Rs. 60,000. Amit asked Ajay to

contribute equally to the loss, but Ajay agreed to contribute only 25% to the loss i.e. in the ratio of capital contribution. Referring to the provisions of the Indian Partnership Act, 1932, how much to be contributed by Ajay to firm's loss? **RTP,M25**

Ans - Section 13(b) of the Indian Partnership Act, 1932 provides, partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm. The amount of a partner's share must be ascertained as per the agreement between the partners. If there is no agreement, then every partner is bound to contribute equally for the Firm's business. There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.

In the instant case, Ajay wanted to contribute only 25% to the loss i.e. in the ratio of capital contribution while Amit requested for equal share in loss.

On the basis of above provisions and facts of the problem given, Ajay must share the loss equally as there was no agreement between partners regarding sharing of profit. Ratio of capital contribution is not related with ratio of sharing profit.

32 - Suman, having 10% share in the property of 200 lakh of a firm retires from the firm on 31 March, 2023. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of 10 lakh during the financial year ending 31st March, 2024. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed 3 lakh from the firm toward the use of her share in the property and profit of the firm which was rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of The IPA, 1932. **2m,MDTP10, 2m,S24**

Ans - According to section 37 of the Indian Partnership Act, 1932,

Where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives

- i) to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or
- ii) to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. Rs. 1,20,000 (6% of Rs. 20 Lakh) or a share of the profits i.e. Rs. 1 Lakh (10% of Rs. 10 Lakh)

from the firm for the use of her share in the property. Therefore, claim of Suman of Rs. 3 Lakh is not valid.

33 - P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2023, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

(i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

7m,MDTP3, 7m,MTP2,Ju24, 6m,D20

Ans - Rights of outgoing partner to carry on competing business (Sec 36 of the IPA, 1932)

1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co. after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the

outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

34 - State the legal consequences of the following as per the provisions of the Indian Partnership Act, 1932: (i) Retirement of a partner (ii) Insolvency of a partner RTP,D19

Ans - (i) Retirement of a Partner (Section 32):

(1) A partner may retire:

- (a) with the consent of all the other partners;
- (b) in accordance with an express agreement by the partners; or
- (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

(ii) Insolvency of a partner (Sec 34)

4m,MDTP4, RTP,J25, 1)c)ii)4m,MTP3,Ju24, RTP,D23

(1) The insolvent partner cannot be continued as a partner.

(2) He will be ceased to be a partner from the very date on which the order of adjudication is made.

(3) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

- (4) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (5) Ordinarily but not invariably, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

35 - On the dissolution of a firm, what are the rights and obligations of partners under the Indian Partnership Act, 1932 with respect to:

- i) The right to have the business wound up and surplus distributed,
- ii) The continuing authority of partners for the purpose of winding up and completing unfinished transactions, and
- iii) The application of firm debts and separate debts of partners.

7m, MTP2, S25

Ans - i) Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932): On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

ii) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:

- (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
- (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

36 - State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932.

7m,MTP1,S25, 7m,MDTP10, 7m,MDTP8, 7m,MDTP3, 7m,MTP2,J25, 7m,S24,
7m,MTP2,Ju24, 4m,Ju22, RTP,Ju20, 4m,D18, RTP,D18

Ans - Dissolution By The Court (Section 44): Court may, at the suit of the partner, dissolve a firm on any of the following ground:

(a) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

(b) Permanent incapacity: When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(c) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partneRs. Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

(e) Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.

(f) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(g) Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

- (i) Deadlock in the management.
- (ii) Where the partners are not in talking terms between them.
- (iii) Loss of substratum.
- (iv) Gambling by a partner on a stock exchange.

37 - P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business?

RTP, S25, 4m, MDTP9, 4m, MDTP8, 4m, MTP2, J25, RTP, J25, 4m, Ju24

Ans - Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partner. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

38 - Dissolution of Firm Vs. Dissolution of Partnership

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

39 - Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932. RTP,M25, 6m,Ju23, RTP,Ju19, ICAI Module

Ans - Application for Registration (Section 58 of the Indian Partnership Act, 1932): The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

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

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

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

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

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State

Government signifies its consent to the use of such words as part of the firm name by order in writing.

Registration (Section 59): When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms and shall file the statement.

The Firm when registered shall use the brackets and word (Registered) immediately after its name.

40 - A & Co. is registered as a partnership firm in 2015 with A, B and C partner. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?

RTP, Ju18

Ans - As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (a) the suit must be instituted by or on behalf of the firm which had been registered;
- (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

41 - Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872.

6m, MTP1, M25, RTP, S25, 5m, Ju23

Ans -

Basis	Void Contract	Voidable Contract
Meaning	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of the other party.
Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of contract.
Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

42 - Shri Shivay Temple Trust decided to get renovation of the temple under trust. For this purpose, the President of the trust discussed the budget with contractor. The contractor provided the budget of Rs. 5,00,000. After gaining enough membership to support the funds required renovating the temple, the committee entered in a contract with contractor for renovation. The plans for the proposed structure were submitted and passed. But as the membership list increased, the plans also expanded. Hence, the expected cost of construction is increased from Rs. 5,00,000 to Rs. 7,00,000. Now, increased amount of Rs. 7,00,000 stayed approved and obligated by the committee and contractor. Renovation work was completed, and contractor demanded the payment from committee. Meanwhile, new members who promised to contribute did not turnout. President had filed the suit against the members who promised to contribute. Members denied on the views that their contract with committee to contribute was without any

consideration hence invalid. State with reason whether committee will succeed under the provisions of the Indian Contract Act, 1872? RTP,M25

Ans - As per Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void. However, there are certain exceptions to this rule. If a promisee undertakes the liability on the promise of the person to contribute to charity, then the contract shall be valid even without consideration. This was also confirmed in case of *Kedarnath vs. Gorie Mahommed*.

In the instant case, the Committee of Shri Shivay Temple trust entered into contract for renovation of temple for Rs. 5,00,000. Some members promised to contribute the funds and on the basis of those promises, the committee has extended the work for which cost was increased from Rs. 5,00,000 to Rs. 7,00,000. New members who promised to contribute did not turn up. The committee had filed the suit against the members who promised to contribute. But members denied the view that their contract with the committee to contribute was without any consideration, hence invalid.

Hence, on the basis of the above facts and provisions, the promise made by members to contribute is perfectly valid even without consideration. Therefore, the committee will succeed, and members have to pay the promised amount.

43 - Define consideration. State the characteristics/rules of a valid consideration.

6m,MDTP6, 6m,MDTP4, 6m,MTP2,S24, 6m,MTP3,Ju24, 5m,MTP1,Ju23,
5m,MTP2,Ju21, 7m,D19, 5m,MTP1,Ju19, RTP,D18

Ans - Consideration [Section 2(d) of the Indian Contract Act, 1872]

"When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

The essential characteristics of a valid consideration are as follows:

- (1) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.
- (2) **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.
- (3) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to

be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

- (4) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
- (5) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- (6) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration.
- (7) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
- (8) **Consideration must not be unlawful, immoral, or opposed to public policy:** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration

44 - Kashish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of Indian Contract Act, 1872? 4m,MTP1,M25, 7m,MDTP1, 7m,MTP1,Ju24

Ans - According to Section 27 of Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, Kashish sold his running business of artificial jewellery to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area and for a period of next one year but just after two months, Kashish opened a show room of real diamond jewellery. Naman sued Kashish for closing the business of real diamond business as it was against the agreement.

As exceptions to section 27 is applicable to similar business only, agreement between Naman and Kashish will not be applicable on business of real diamond jewellery. Hence, Kashish can continue his business of real diamond jewellery.

45 - Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872. 6m,MDTP6, 6m,MTP2,S24, 7m,D23

Ans - Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

- 1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- 2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice, therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.

Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

46 - Explain any five circumstances under which contracts need not be performed with the consent of both the parties. 7m,MTP1,D23, 7m,MTP2,D22, 7m,D21

Ans - Under following circumstances, the contracts need not be performed with the consent of both the parties:

- i) **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
- ii) **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
- iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
- iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)
- v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
- vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

47 - Paridhee, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Mittal, owner of MP Laptops, for purchase of Laptop on credit amounting Rs. 60,000/- on 1st August 2022. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2023. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Paridhee was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

- i) By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?
- ii) By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?
- iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority? **RTP, J25, RTP, D23, 6m, Ju22**

Ans - A contract made with or by a minor is void ab-initio: Pursuant to Section 11 of the Indian Contract Act, 1872, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

- i) By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, a minor.
- ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

In the instant case, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Paridhee.

- iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Hence, in this case also, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, after she attains majority.

48 - Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was Rs. 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of Rs. 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872? **RTP, Ju22**

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

Further, a person is deemed to be in a position to dominate the will of another—

- a) where he holds a real or apparent authority over the other, or

(b) where he stands in a fiduciary relation to the other; or

(c) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 19A provides that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

From the facts of the case, Chandan signed the promissory note under undue influence applied by doctor. Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan.

49 - Explain the term Wagering agreement in the light of the Indian Contract Act, 1872. Also, explain some transactions resembling with wagering transaction but which are not void. 6m,MDTP7,9, 6m,MTP1,J25, 6m,Ju24, RTP,Ju20

Ans - Wagering agreement (Section 30 of the Indian Contract Act, 1872): An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

Transactions resembling with wagering transaction but are not void

- i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid.
- iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

50 - Mr. SHYAM owned a motor car. He approached Mr. HARISH and offered to sell his motor car for Rs. 3,00,000. Mr. SHYAM told Mr. HARISH that the motor car is running at the rate of 20 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. HARISH agreed with the proposal of Mr. SHYAM and took delivery of the car by paying Rs. 3,00,000/- to Mr. SHYAM. After 10 days, Mr. HARISH came back with the car and stated that the claim made by Mr. SHYAM regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. HARISH can rescind the contract on the above ground.

RTP, Ju21, RTP, D20, 6m, MTP1, D18, Sim, ICAI Module

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

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

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

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

51 - T owes G, the following debts as per the table given below:

Amount of the Debt (in Rs.)	Position of Debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

i) A cheque of Rs. 12,500

ii) A cheque of Rs. 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.

4m, D23

Ans - As per the provisions of Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

As per the provisions of Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

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

Since one of the issued cheques was exactly the amount of the debt due i.e. of Rs.12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of Rs. 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Hence cheque of Rs. 12,500 will be appropriated against the debt of Rs. 12,500 which is due on 1st April, 2022. As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of Rs. 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, Rs.2,500 will be appropriated for the first debt and Rs. 1,500 will be appropriated towards the second debt.

52 - Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After

completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.

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

4m,MTP1,D18, ICAI Module

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

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

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the Motor Car.

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

53 - In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of The Indian Contract Act, 1872.

3m,MDTP7,10, 3m,MTP1,J25, 3m,S24

Ans - Ordinary damages: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

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

54 - Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract. RTP,D22

Ans - Vindicative or Exemplary damages

These damages may be awarded only in two cases:

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
 - (b) for wrongful dishonour by a banker of his customer's cheque because of the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.
- A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (Gibbons v West Minister Bank)

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

4m,MDTP5, 5m,MTP1,S24, 4m,MTP2,Ju23, 4m,MTP1,Ju22, ICAI Module

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

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

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

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

56 - Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid Rs. 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- (i) Whether the management of Shital Vidya Mandir has right to terminate the contract?
- (ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- (iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

RTP, D23, 4m, Ju22 OR

Ans - Effect of a Refusal of Party to Perform Promise

According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

57 - "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the ICA, 1872.

5m,MTP2,D23, 5m,Ju22, RTP,Ju21, ICAI Module

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

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

Distinction between liquidated damages and penalty

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. Court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

58 - Raghav found gold and diamond studded wristwatch value approximately 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not turn up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he incurred 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872:

(A) Gifting the wristwatch to his son.

(B) Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.

(C) Retaining the possession of wristwatch till recovery of lawful expenses.

(D) Selling of wristwatch for recovery of expenses.

4m, MDTP10, 4m, S24

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

Thus, a finder of lost goods has:

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

The right of finder of lost goods- may sue for specific reward offered [Section 168]:

The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

- (1) when the thing is in danger of perishing or of losing the greater part of its value, or
- (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

- (A) **Gifting the wristwatch to his son Mahesh is unlawful.** Raghav had no ownership rights over the watch and could not legally transfer it to someone else.
- (B) **Warning Madhav to Sue for Recovery of Lawful Expenses:** Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.
- (C) **Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses:** Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.
- (D) **Selling of Wristwatch for Recovery of Expenses:** the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and selling the watch would be unlawful.

59 - Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872.

5m, D20

Ans - Distinction between Wagering Agreement and Contract of Insurance

Basis	Wagering Agreement	Contract of Insurance
Meaning	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.	It is a contract to indemnify the loss.
Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of the insurance contract is the mutual consideration (premium and compensation amount).
Insurable Interest	There is no property in case of wagering agreement.	Insured party has an insurable interest in the life or property sought to be insured.
Contract of Indemnity	Loser has to pay the fixed amount on the happening of an uncertain event.	Except for life insurance, the contract of insurance indemnifies the insured person against loss
Enforceability	It is void and unenforceable agreement	It is valid and enforceable
Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
Public	They have been regarded as against	They are beneficial to the society.

Welfare

the public welfare.

60 - According to provisions of the Indian Contract Act, 1872, define the following terms with reference to contract of guarantee:

(i) Nature and extent of Surety's Liability

(ii) Discharge of a Contract of Surety by Invalidation of the Contract of Guarantee.

6m, M25

Ans - i) Nature and extent of Surety's Liability [Section 128 of the Indian Contract Act, 1872]

(A) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

(B) Liability of surety is of secondary nature as he is liable only on default of principal debtor.

(C) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.

(D) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

ii) Discharge of a contract of Surety by the invalidation of the contract of guarantee.

(a) Guarantee obtained by misrepresentation [Section 142]: Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(b) Guarantee obtained by concealment [Section 143]: Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

(c) Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144): Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

61 - "Explain the circumstances under which a surety may be discharged by revocation of the contract of guarantee under the Indian Contract Act, 1872."

6m, MTP1, M25

Ans - A surety is said to be discharged when his liability as surety comes to an end.

The various modes of discharge of surety are as below:

(i) By revocation of the contract of guarantee.

(ii) By the conduct of the creditor, or

(iii) By the invalidation of the contract of guarantee.

By revocation of the Contract of Guarantee

(a) Revocation of continuing guarantee by Notice (Section 130 of the Indian Contract Act, 1872): The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given. A specific guarantee can be revoked only if liability to principal debtor has not accrued.

(b) Revocation of continuing guarantee by surety's death (Section 131): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

(c) By novation [Section 62]: The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

62 - R owns an electronics store. P visited the store to buy a water purifier priced at 54,000/-. He specifically requested R for a purifier with a copper filter. As P wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, R demands a guarantor for the transaction. S (a friend of P) came forward and gave the guarantee for payment of water purifier. R sold P, a water purifier of a specific brand. P made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act 1872, the liability of S as a guarantor to pay the balance price of water purifier to R.

What will be your answer, if R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither P nor S was aware of this fact and upon discovering the truth, P refused to pay the price. In response to P's refusal, R filed the suit against S, the guarantor. Explain with reference to the Indian Contract Act 1872, whether S is liable to pay the balance price of water purifier to R?

7m,MDTP7,9, 7m,MTP1,J25, RTP,J25, 7m,Ju24

Ans - As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default.

In this case, S has given a guarantee for P's payment obligation towards R. When P defaulted after making four monthly instalments and became insolvent, S's liability as a guarantor will come into existence.

According to Section 128 of the Act, the liability of the surety is co extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of Rs. 30,000 to R. [54,000-(4×6,000)]

In the second situation, R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here R misrepresented the filter type and both P and S were unaware of this fact. The creditor (R) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from S will be considered to be invalid.

Consequently, S cannot be held liable to pay the balance price of the water purifier to R.

63 - Rahul hired a car for 15 days from M/s Kushwah Travels. After five days, M/s Kushwah Travels demanded back his car from Rahul. He was also agreed to compensate for any loss suffered by Rahul due to such premature return of goods. But Rahul refused to return the car before the period of bailment i.e. 15 days. M/s Kushwah Travels sued Rahul for recovery of car. Referring to the provisions of the Indian Contract Act, 1872, whether M/s Kushwah Travels can recover the car from the Rahul before the time fixed for bailment?

RTP, S25

Ans - According to the Section 159 of the Indian Contract Act, 1872, when the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object. However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

In the given problem, Rahul hired a car for 15 days from M/s Kushwah Travels but just after five days, M/s Kushwah Travels demanded back his car from Rahul. Rahul refused to return the car before the period of bailment, i.e. 15 days. M/s Kushwah Travels filed suit against Rahul for recovery of car.

Premature recovery of goods bailed available only in case of gratuitous bailment. If bailment is for hire, this right is not available to bailor even he is ready to compensate for such premature return. Hence, M/s Kushwah Travels cannot recover back the goods before 15 days.

64 - Define the term Ratification under the Indian Contract Act, 1872. Explain the rights of a person as to acts done for him without his authority. What is the effect of ratification? 6m, MTP2, S25

Ans - Rights of person as to acts done for him without his authority, Effect of ratification [Section 196 of the Indian Contract Act, 1872]: Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. In simple words, "Ratification" means approving a previous act or transaction. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.

Essentials of a valid Ratification

- a) Ratification may be expressed or Implied [Section 197]: Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- b) Knowledge requisite for valid ratification [Section 198]: No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
- c) The whole transaction must be ratified [Section 199]: There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.
- d) Ratification cannot injure third person [Section 200]: When the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
- e) Ratification within reasonable time: Ratification must be made within a reasonable period of time.
- f) Communication of Ratification: Ratification must be communicated to the other party.
- g) Act to be ratified must be valid: Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.

65 - 'Agent cannot personally enforce, nor be personally bound by, contracts on behalf of the principal' however there are some exceptions to this general rule, explain.

4m, MDTP10, 4m, MTP2, J25, 4m, S24

Ans - Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal:** – When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.
- (2) Where the agent does not disclose the name of his principal or undisclosed principal; (Principal unnamed):** when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
- (3) Non-existent or incompetent principal:** Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- (4) Pretended agent** – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.
- (5) When agent exceeds authority-** When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

66 - Kartik agreed to sell his laptop to Vasant for a price to be fixed by Kusum a hardware engineer. However, before the delivery of the laptop, Kartik changed his mind and did not share any particulars and configuration of the laptop with Kusum, which made her unable to do the valuation. Kusum refused to do valuation.

Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it. However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930.

5)a)i)3m,MDTP7,10, 5)a)i)3m,MTP1,Jan2025, 2)a)ii)3m,Sept2024

Ans - Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

In the instant case, as Kusum cannot do valuation of laptop due to non-sharing of particulars and configuration by Kartik who was bound by his promise, the agreement will be void.

The other remedy available to Vasant is that he can claim damages from Kartik as he will be liable for the damages to Vasant who is not at fault.

67 - Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.

(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?

Sim, 2)a)7m, MDTP2, 5, Sim, RTP, Jan2025, Sim, 5)a)7m, MTP1, Sept2024, RTP, Dec2023, 5)a)6m, MTP2, Dec2022, 5)a)6m, June2022, RTP, Dec2021

Ans - As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid.

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika.

68 - Mr. Rahul, a wholesale trader in Delhi, placed an order with Mr. Kapil, a textile merchant, for 50 rolls of "premium silk cloth" at an agreed price. It was clearly mentioned that the cloth should be of premium-quality silk and suitable for manufacturing wedding garments. Mr. Kapil delivered the goods on the scheduled date. On a casual examination at the time of delivery, the rolls appeared to be fine, so Rahul accepted them.

However, later, while cutting and using the cloth for tailoring, it was discovered that the rolls contained a mixture of synthetic fibers and had hidden defects such as small holes and stains. These defects made the cloth unfit for making wedding garments, causing heavy losses to Rahul. When Rahul demanded a refund, Kapil refused, contending that Rahul had already inspected the goods and accepted delivery.

State, with reasons, whether Rahul can reject the goods and recover the price under the Sale of Goods Act, 1930.

RTP, Jan2026

Ans - As per Section 15 of the Sale of Goods Act, 1930, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. Further, as per Section 16(2), when goods are bought by description from a seller who deals in such goods, there is an implied condition that they shall be of merchantable quality. However, if the buyer has examined the goods, the seller is not liable for defects which such examination ought to have revealed. But where the defects are latent and cannot be discovered on ordinary inspection, the seller remains liable.

In the present case, Rahul, a trader, purchased 50 rolls of "premium silk cloth" from Kapil for the specific purpose of manufacturing wedding garments. On a casual inspection at the time of delivery, the cloth appeared to be fine. However, when used for tailoring, it was discovered that the fabric contained synthetic fibers and had hidden holes and stains. These defects were not visible during a simple inspection at the time of delivery but made the cloth unfit for its intended purpose. Kapil refused to refund the amount, stating that Rahul had already accepted the goods.

On the basis of the above provisions and facts, it is clear that the cloth did not correspond with its description of "premium silk" and was also not of merchantable quality. The defects were latent and could not have been noticed on ordinary inspection. Hence, Rahul is entitled to reject the goods and recover the price. Kapil cannot avoid liability merely on the ground that casual inspection was done by Rahul.

69 - Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy

tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.

With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler?

5)a)6m,MTP1,Dec2022

Ans - Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):

When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points -

(i) Right to examine the goods by the buyer. The buyer should be given chance to examine the goods. Section 15

(ii) The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]

In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.

70 - What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act.

6)c)7m,MDTP2, RTP,Jan2025, RTP,Dec2023, 4)a)6m,June2022, 4)a)6m,MTP1,June2021, RTP,Dec2019, 4)a)6m,MTP2,June2019, 4)a)6m,MTP1,June2018

Ans - Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample.

Implied Warrants (Types):

- 1. Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
- 2. Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- 3. Warranty as to quality or fitness by usage of trade [Section 16(3)].** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- 4. Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

71 - Explain the rules relating to the delivery of goods under the Sale of Goods Act, 1930" with reference to the following:

- (i) Effect of part delivery**
- (ii) Place of delivery**
- (iii) Delivery of wrong quantity."**

6)c)MTP1, May2025

Ans - i) Effect of part delivery (Section 34 of the Sale of Goods Act, 1930): A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

ii) Place of delivery [Section 36(1)]: Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract,

- ♦ goods sold are to be delivered at the place at which they are at the time of the sale, and
- ♦ goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or
- ♦ if goods are not then in existence, at the place at which they are manufactured or produced.

iii) Delivery of wrong quantity [Section 37]: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole. [Sub-section (3)]

The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Sub section (4)]

72 - J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.

The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930, 6)c)7m,MDTP8,9, 6)c)7m,MTP2,Jan2025, RTP,Jan2025, 6)c)7m,June2024

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

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

In the given case, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags,

the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100.

A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

73 - X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

5(a)i)4m,Dec2023

Ans - As per section 30(2) of the Sale of Goods Act, 1930, where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them.

In the instant case, furniture was delivered to Y under an agreement that price was to be paid in three instalments; the furniture to become property of Y on payment of third instalment. Y sold the furniture to Z before the third instalment was paid. Here, Z acquired a good title to the furniture, since he purchased the furniture in good faith.

Hence, X will not succeed in his suit for the recovery of the furniture as Z acquired a good title of the furniture.

74 - PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10.am in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:

Mr. Neel	Rs. 5.70 lakh
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Mr. Raj	Rs. 4.85 lakh
Mr. Dev	Rs. 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

For another bid of Italian Furniture was made by two parties as follows:

Mr. Dheer	Rs. 15 lakh
Mr. Madhu (on behalf of R N & Associates)	Rs. 15.20 lakh

Sale was completed in favour of Mr. Dheer instead of Mr. Madhu.

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not?

5)a)7m,MDTP9, 5)a)7m,June2024

Ans - An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction.

In terms of the provisions of the above Section, following are some of the requirements, which inter alia are required to be complied with for conduct of a valid auction sale-

(i) Where the goods are sold in lots: Where the goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(iii) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(iv) Reserved price: The sale may be notified to be subject to a reserve or upset price;

In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

75 - Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

(i) State, whether Mr. Shankar was right in his decision?

(ii) What would be your answer if Mr. Ganesh became insolvent within five days of the contract?

5)a)7m,MTP1,May2025, RTP,June2024

Ans - According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

(a) The whole of the price has not been paid or tendered.

(b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)

(b) where goods have been sold on credit, but the term of credit has expired; or

(c) where the buyer becomes insolvent.

In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.

(i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat.

(ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery.

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