



PAPER – 2: BUSINESS LAWS



QUESTIONS

Indian Regulatory Framework

1. What do you understand by Indian Judicial System and what are its various functions?

The Indian Contract Act, 1872

2. Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872?
3. Sarthak is employed as a cashier on a monthly salary of ` 50,000 by ABC bank for a period of three years. Mohit gave surety for Sarthak's good conduct. After nine months, the financial position of the bank deteriorates. Then Sarthak agrees to accept a lower salary of ` 40,000 per month from the Bank. Two months later, it was found that Sarthak had misappropriated cash from the time of his appointment. What is the liability of Mohit taking into account the provisions of the Indian Contract Act, 1872?
4. Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ` 2,500 per day. However, after a month, Rahul willfully absents himself from



the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

- (i) Does the hotel have the right to end the contract?
 - (ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?
 - (iii) In which of the
case –
(termination of
contract or
continuance of
contract) can the hotel claim damages that it had suffered as a result of this breach?
5. Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:
- (i) Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.
 - (ii) Seizure of goods by customs authorities.
6. Mr. Sanjay Kothari was a big businessman having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met an accident, and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?
7. (i) Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.
- (ii) Mr. Sooraj promises Mr. Manoj to paint a family picture for



Mr. Manoj binds Mr. Sooraj to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872.

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

The Sale of Goods Act, 1930

9. Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies "Sir, my all sweets are fresh and of good quality." Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, asks the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.
- (a) State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?
- (b) Will your answer be different if Prakash does not taste the sweets?
10. Akansh purchased a Television set from Arvind, the owner of Gada Electronics on the condition that first three days he check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arvind demands the price of a Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?
11. Mr. Arun contracted to sell his swift car to Mr. Nikhil. Both missed to discuss the price of the said swift car. Later, Mr. Arun refused to sell his swift car to



Mr. Nikhil on the ground that the agreement was void, being uncertain about the price. Does Mr. Nikhil have any right against Mr. Arun under the Sale of Goods Act, 1930?

12. 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:
- State, whether Mr. Shankar was right in his decision?
 - What would be your answer if Mr. Ganesh became insolvent within five days of contract?

The Indian Partnership Act, 1932

13. Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹ 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?
14. Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr.



John has to pay the electricity bill of ₹ 2800 and ₹ 200 as a penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹ 3000 to Mr. John?

15. X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932?
16. A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above.
17. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

The Limited Liability Partnership Act, 2008

18. A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional



partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities.

The Companies Act, 2013

19. Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?
20. AK Private Limited has borrowed ` 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ` 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.
21. Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.



The Negotiable Instruments Act, 1881

22. Sachin bought 1000 Kg rice from Saurabh for ₹ 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?
23. A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it. On maturity, B did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether A would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881?



SUGGESTED ANSWERS/HINTS

1. Indian Judicial System is a branch which through the enforcement of Law resolves dispute between citizens or between citizens and the Government.

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.

Indian Judicial System performs his functions through the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts, District Courts and Metropolitan 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.

2. As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or by his authorized agent. Communication of acceptance by third person cannot be concluded as valid acceptance.

In the instant case, Mr. Parth applied for a job as principal of a school and one member of the school management committee privately informed Mr. Parth that he was appointed. Later, the management of the school appointed someone else as a principal.

On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment.

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

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

Hence, Mohit is liable as surety for the loss suffered by the bank due to misappropriation of cash by Sarthak during the first nine months but not for misappropriations committed after the reduction in salary.

4. By analysing Section 39 of the Indian Contract Act, 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee):
 - (a) To terminate the contract



- (b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers.

In the given case,

- (i) Yes, the hotel has the right to end the contract with Rahul, the DJ.
 - (ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.
 - (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.
5. As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

For a bailment to exist, the bailor must give possession of the bailed property and the bailee must accept it.

- (i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Vikas, Section 148, of the Indian Contract Act, 1872 shall not be applicable.
 - (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists, and section 148 is applicable.
6. Section 25 of the Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

In the instant case, the transfer of house made by Mr. Sanjay Kothari on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not



enforceable, and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

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

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. Ayush and Mr. Bobby is voidable at the option of Mr. Bobby as it was induced by undue influence by Mr. Ayush and therefore Mr. Bobby can sue Mr. Ayush.

- (ii) The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting



work on Mr. Sooraj's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. Sooraj had promised to deliver some photographs to Mr. Manoj, the legal representatives of Mr. Sooraj shall be bound to deliver the photographs in this situation.

- 8. Quasi Contracts:** Under certain special circumstances, obligations resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi-contract are:
1. It does not arise from any agreement of the parties concerned but is imposed by law.
 2. Duty and not promise is the basis of such contract.
 3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
 4. Such a right is available against specific person(s) and not against the whole world.
 5. A suit for its breach may be filed in the same way as in case of a complete contract.
- 9.** By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the



description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

- (a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.
- (b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prakash can return the sweets and avoid the contract.

- 10.** According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:
- (i) when he signifies his approval or acceptance to the seller,
 - (ii) when he does any other act adopting the transaction, and
 - (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

According to the above provisions and fact, the property is not passed to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Arvind.

- 11.** As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.



According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in a manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed discussing the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. Arun and Mr. Nikhil have entered into a contract for the sale of a swift car, but they did not fix the price of the same. Mr. Arun refused to sell the car to Mr. Nikhil on this ground. Mr. Nikhil can legally demand the car from Mr. Arun and Mr. Arun can recover a reasonable price for the car from Mr. Nikhil.

- 12.** 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.

- 13.** By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.

- 14.** According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of
- (a) business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:
 - 1. There must be an agreement between all the persons concerned;
 - 2. The agreement must be to carry on some business;
 - 3. The agreement must be to share the profits of a business and



4. The business was carried on by all or any of them acting for all.

On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim the rest of ₹ 1500 from Mr. Raheem.

- 15.** By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.

In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.

Following the provisions of Section 45, X and Y are continuing liable against third party even after dissolution of firm until public notice is given. As in the given problem, X became insolvent, therefore, Y will be liable to Z.

- 16.** According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –
- (a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
 - (b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.



In the given scenario, B had sold iron bar to the firm at the current prevailing market rate of 350 per Kg though he had stock with him which he bought for INR 200 per Kg. Hence, he made an extra profit of INR 150/Kg. This arises purely out of transactions with the firm. Hence, B is accountable to the firm for the extra profit earned thereby.

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

The rights of such a transferee are as follows:

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

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

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

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his



own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

18. Comparison between a Limited Liability Partnership (LLP) and partnership can be analysed on the below tabulated parameters.

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.



6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
		but its existence continues forever.	
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.



9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing of documents	LLP is required to file: (i) Annual	Partnership firm is not required to file any annual document with



		statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	of the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
17.	Minor partner as	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

19. It was decided by the court in the case of *Gilford Motor Co. Vs. Horne*, if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce



the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

On considering the decision taken in *Gilford Motor Co. Vs. Horne* and facts of the problem given, it is very much clear that Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and the separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

20. This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

(i) Whether AK Private Limited is liable to pay the debt?

As per the facts given, AK Private Limited borrowed ` 36 crore from BK Finance Limited which is beyond its borrowing power of ` 30 crore.

Hence, contract for borrowing of ` 36 crore, being ultra vires the Memorandum of Association and thereby is void. AK Private Limited is not, therefore, liable to pay the debt.

(ii) Remedy available to BK Finance Limited:

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take



action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

21. Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

As Mike LLC is incorporated in Singapore and having a place of business in Pune, India, it is a foreign Company.

22. According to 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;

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. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

On the basis of the above law provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, A would not be discharged from liability even if the non-presentment by B as the promissory note was payable on demand and no specific place for payment was mentioned.

