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2018-2025

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MAY 2018

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z.

(4 Marks)

(b) Ravi Private Limited has borrowed ₹ 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.? ***(4 Marks)***

(c) What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery. ***(4 Marks)***

Answer

(a) As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case, X, Y and Z jointly promised to pay ₹ 3,00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive ₹ 20,000 from Y's estate, and ₹ 1,40,000 from Z.

(b) As per the facts given, Ravi Private Limited borrowed ₹ 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

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So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum.

Remedy available to the Mudra Finance Ltd.: 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, a company which deals with the other, is deemed to know about the powers of the company.

So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.

(c) **Delivery of goods [section 2(2) of the Sale of Goods Act, 1930]:** Delivery means voluntary transfer of possession from one person to another. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Modes of delivery: Following are the modes of delivery for transfer of possession:

(i) **Actual delivery:** When the goods are physically delivered to the buyer.

(ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

(iii) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

Question 2

(a) State the exceptions to the rule "An agreement without consideration is void". ***(5 Marks)***

(b) What are the essential elements to form a LLP in India as per the LLP Act, 2008? ***(5 Marks)***

(c) (i) Distinguish between wagering agreement and contract of insurance. ***(2 Marks)***

OR

(ii) Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". ***(2 Marks)***

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Answer

(a) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872). However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made even without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** Any written and registered agreement made on account of love and affection between the parties standing in near relationship to each other.
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.
3. **Promise to pay time barred debt:** A promise in writing signed by the person making it or by his authorized agent, made to pay a debt barred by limitation.
4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
6. **Bailment:** No consideration is required to effect the contract of bailment (Section 148).
7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

(b) **Essential elements to incorporate LLP-** Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;

(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];

(iii) To have registered office in India to which all communications will be made and received;

(iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.

(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.

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(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.

(c) (i) Distinction between Wagering Agreement and Contract of Insurance

	Basis	Wagering Agreement	Contracts of Insurance
1.	**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.
2.	**Consideration**	There is no consideration between the two parties. There is just gambling for money.	The crux of insurance contract is the mutual consideration (premium and compensation amount).
3.	**Insurable Interest**	There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has insurable interest in the life or property sought to be insured.
4.	**Contract of Indemnity**	Loser has to pay the fixed amount on the happening of uncertain event.	Except life insurance, the contract of insurance indemnifies the insured person against loss
5.	**Enforceability**	It is void and unenforceable agreement.	It is valid and enforceable
6.	**Premium**	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
7.	**Public Welfare**	They have been regarded as against the public welfare.	They are beneficial to the society.

OR

(ii) Minor is liable to pay for the necessaries supplied to him: This statement is incorrect. The case of necessaries supplied to a minor or to any other person whom

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such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. A claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.

Question 3

(a) *Distinguish between dissolution of firm and dissolution of partnership.* ***(2 Marks)***

(b) *What are the consequences of Non-Registration of a Partnership Firm? Discuss.* ***(4 Marks)***

(c) *M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.* ***(6 Marks)***

Answer

(a) DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	**Continuation of business**	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	**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.
3.	**Order of court**	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	**Scope**	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	**Final closure of books**	It involves final closure of books of the firm.	It does not involve final closure of the books.

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(b) **Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932]**: Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. **These disabilities briefly are as follows:**

(i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

(c) Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, 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. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ₹ 1.25 lakh (i.e. ₹ 12.75 minus ₹ 11.50 = ₹ 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

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Question 4

(a) *What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods.* ***(6 Marks)***

(b) *X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Spouses of X and Y fought in ladies club on their personal issue and X's wife was hurt badly. X got angry on the incident and he convinced Z to expel Y from their partnership firm. Y was expelled from partnership without any notice from X and Z. Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?* ***(6 Marks)***

Answer

(a) **Appropriation of goods:** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials regarding appropriation of unascertained goods are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

(b) A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

(i) the power of expulsion must have existed in a contract between the partners;

(ii) the power has been exercised by a majority of the partners; and

(iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

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

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

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

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

Question 5

(a) *Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.* ***(6 Marks)***

(b) *Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company?* ***(6 Marks)***

Answer

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

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

(i) **Suit for price (Section 55)**

In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

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(b) **One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]:** The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year)-
  - shall be eligible to incorporate a OPC;
  - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Question 6

(a) *Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872?* ***(5 Marks)***

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(b) *What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.* ***(4 Marks)***

(c) *State the limitations of the doctrine of indoor management under the Companies Act, 2013.* ***(3 Marks)***

Answer

(a) **Definition of Fraud under Section 17: 'Fraud' means and includes** any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

(b) **Conclusive evidence of partnership:** Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

(i) Parties have not retained any record of terms and conditions of partnership.

(ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties

(iii) No account of the partnership was opened with any bank

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(iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

(c) The doctrine of Indoor Management has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

(i) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(ii) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

(iii) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

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SECTION B – BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Attempt any **three** questions from the remaining **four** questions.*

Question 7

(a) Read the passage carefully and answer the questions given below:

A life of action and danger moderates the dread of death. It not only gives us fortitude to bear pain, but teaches us at every step the precarious tenure on which we hold our present being. Sedentary and studious men are the most apprehensive on this score. Dr. Johnson was an instance in point. A few years seemed to him soon over, compared with those sweeping contemplations on time and infinity with which he had been used to pose himself. In the still life of a man of letters there was no obvious reason for a change. He might sit in an arm chair and pour out cups of tea to all eternity would it had been possible for him to do so. The most rational cure after all for the inordinate fear of death is to set a just value on life. If we mere wish to continue on the scene to indulge our head-strong humour and tormenting passions, we had better be gone at once; and if we only cherish a fondness for existence according to the good we desire from it, the pang we feel at parting it will not be very server.

(i) What type of people are afraid of death and Why? ***(1 Mark)***

(ii) How can we get rid of fear of death? ***(1 Mark)***

(iii) What idea do you form about Dr. Johnson from this passage? ***(1 Mark)***

(iv) Write Summary of the Passage. ***(2 Marks)***

(b) Read the passage:

(i) Make Notes, using headings, sub headings, and abbreviations whenever necessary. ***(3 Marks)***

(ii) Write Summary. ***(2 Marks)***

(I) Anything printed and bound in a book size can be called a book, but the quality or mind distinguishes the value of it.

What is a book? This is' how Anatole France describes it:" A series of little printed signs essentially only that. It is for the reader to supply himself the forms and colors and sentiments to which these signs correspond. It will depend on him whether the book be dull or brilliant, hot with passion or cold as ice. ***Or*** *if you prefer to put it otherwise each word in a book is a magic finger that sets a fibre of our brain vibrating like a hard string and so evokes a note from the sounding board of our soul No matter how skilful, how inspired the artist's hand, the sound it makes depends on the quality of the strings within ourselves"*

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Until recently books were the preserve of a small section _____ the urban upper classes. Some, even today, make it a point to call themselves intellectuals. It would be a pity if books were meant only for intellectuals and not for housewives, farmers, factory workers, artisans and, so on.

In India there are first generation learners, whose parents might have been illiterate. This poses special challenges to our authors and to those who are entrusted with the task of disseminating knowledge. We need much more research in the use of language and the development of techniques by which know ledge can be transferred to these people without transmission loss. Publishers should initiate campaigns to persuade people that a good book makes a beautiful present and that reading a good book can be the most relaxing as well as absorbing of pastimes. We should aim at books of quality no less than at quantitative expansion in production and sale. Unless one is constantly exposed to the best, one cannot develop a taste for the good.

(2 Marks)

Answer

(a) Reading comprehension

People who have a sedentary lifestyle and are too much into writing/literature are afraid of death.

We can get rid of the fear of death by following a life of action and danger and also by setting a value on life.

Dr. Johnson, being a man of letters seemed to have a sedentary life style. He feared death because of his monotonous life.

A life that is full of action and danger would not fear death. One needs to be active and avoid a sedentary life full of contemplation. One must cherish what one has and enjoy moments as they come, rather than brood over the past and future. Dr. Johnson is a good example of a case where death was severely dreaded.

(b) (i) A. Value of bks. acc. to Anatole France

(1) not merely printed signs

(2) reader gives

(i) colours

(ii) forms

(iii) sentiments

a. brilliant or boring

b. touches our souls

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B. Bks. are meant for diff. sections of society

(1) until recently bks. were read by only intellect.

(2) meant for all housewives, farmers, artisans, etc.

C. Bks. for 1st gen. learners

(1) challenge for authors

(2) need more research in use of lang.

(3) need for dev. of teaching tech. a. knowledge transfer w/o transms^{n} loss

D. Publisher's role

(1) campaigns to persuade

a. bks make good presents

b. rdng – a relaxing pastime

Key

1. acc. - according
2. 1st - first
3. bks. - books
4. gen. - generation
5. diff. – different
6. lang. - language
7. intellect. - intellectuals
8. dev. – development
9. w/o – without
10. transms^{n} - transmission

Summary

A book can be defined as anything that is bound and printed. However, there can be factors of quality and the mind applied to it that distinguish a book. According to Anatole France, a reader has powers to convert the book into magic; using his brain connect with the words printed in it. No matter how good an author is, the content becomes interesting only if the reader wishes to make it so. Apparently, books have always been associated with the urban sector. One must try to spread the reach to a wider audience, emphasizing the fact that good techniques and language can make book reading the most enjoyable of all pass times.

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Question 8

(a) Define visual communication. ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

Perpetual

(1) General

(2) Emotional

(3) Stubborn

(4) Continuous ***(1 Mark)***

(ii) Select a suitable antonym for the word given in question:

Disparage

(1) Eulogise

(2) Belittle

(3) Alert

(4) Defame

(iii) Change the following sentence to indirect speech:

The policeman said to the stranger who are you. ***(1 Mark)***

(c) Write a precis and give appropriate title to the passage given below:

Teaching is the noblest of professions. A teacher has a scared duty to perform. It is he on whom rests the responsibility of moulding the character of young children. Apart from developing their intellect, he can inculcate in them qualities of good citizenship, remaining neat and clean, talking decently and sitting properly. These virtues are not easy to be imbibed. Only he who himself leads a life of simplicity, purity and rigid discipline can successfully cultivate these habits in his pupils.

Besides a teacher always remain young. He may grow old in age, but not in spite. Perpetual contact with budding youths keeps him happy and cheerful These are moments when domestic worries weigh heavily on his mind, but the delightful company of innocent children makes him overcome his transient moods of despair. ***(5 Marks)***

Answer

(a) Visual communication

Communication that happens through visual aids such as signs, graphic designs, colour, illustrations etc is visual communication. It is a powerful medium these days, especially for office presentations. Visuals can also include pie charts, graphs, or any other colourful representation. It adds value to the content and forms a major part of audio visual ppt's.

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(b) (i) (4) continuous

(ii) (1) eulogize

(iii) Indirect speech: the policeman asked the stranger who he was.

(c) Precis writing

Possible Titles: A teacher remains immortal

A Teacher never grows old

Teaching: a selfless and noble profession

Teaching is constant learning and practicing

Teaching is a selfless job which goes on even when the teacher gets old. He/she is constantly learning, no matter how old one grows. From imparting education to discipline to mannerisms, a teacher is a role model. He leads a simple life, of virtues and morals and inculcates the same in his students. The pleasant company of students removes a teacher's personal worries and refreshes his mind.

Question 9

(a) Write any four barriers to effective communication? ***(2 Marks)***

(b) Choose the word which best expresses the meaning of the given word:

(i) Despot

(1) Tyrant

(2) Storage

(3) Hot meal

(4) Against ***(1 Mark)***

(ii) Illicit

(1) Storage

(2) Emotional

(3) Unlawful

(4) Grand ***(1 Mark)***

(iii) Change the following sentence into indirect speech:

The Shopkeeper says, "prices are shooting up alarmingly. ***(1 Mark)***

(c) Write circular addressing to the employees regarding office timings. ***(5 Marks)***

Answer

(a) Four barriers to Effective communication

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(1) **Physical barriers:** include noise, old technology, technical disturbances, distant locations, lack of appropriate infrastructure.

(2) **Organizational structural barriers:** Lack of a proper chain of command in office, gaps in the hierarchy creates problems in communication

(3) **Language barriers:** Language creates problems in communication. Difficult words, unclear jargon, different community having different languages

(4) **Cultural barriers:** Cultures have different customs and can lead to miscommunication.

(5) **Emotional barriers:** One of the chief barriers to open and free communications is the emotional barrier. Anger, fear of criticism or ridicule, mistrust of person, suspicion of intentions, jealousy, anxiety and many more feelings and sentiments we carry within us, affect our communication ability and quality. A person who is upset and disturbed cannot pass on or receive information appropriately and objectively. His emotions will colour his perception and assessment of the communication.

(6) **Attitude barriers:** Personal attitudes of employees can affect communication within the organization.

(7) **Perception Barriers:** Each one of us perceives the world differently and this causes problems in communicating.

(8) **Physiological barriers:** Ill health, poor eyesight, hearing difficulties or any other physiological problems can be hurdles in effective interaction with others.

(9) **Technology barriers:** Anyone who is not tech friendly struggles to communicate effectively via the medium.

(10) **Gender barriers:** Due to traditional mindsets, many men find it difficult to take orders from, or provide information to women.

(b) (i) 1. Tyrant

(ii) 3. Unlawful

(iii) The shopkeeper said that prices were shooting up alarmingly.

(c) Circular Writing Sample 1: Employees working as per flexible office timings

Circular No. XV	14th May, 2018
Office Timings	
For all employees	
This is an official communication about the office timings to be followed by all employees. As per flexible timings approved by the management, working hours/timings are as under:	

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9:30 am to 5:30 pm

10:00 am to 6:30 pm

10:30 am to 7:00 pm

For Housekeeping staff:

Shift-1: 8:00 am to 4:00 pm

Shift-2: 2:00 pm to 8:00 pm

Saturday and Sunday is a holiday for all employees.

Strict action will be taken against defaulters. In case of any emergency, please inform your respective heads/managers.

XYZ

HR manager

Circular Writing Sample 2: Employees working for different foreign clients

Circular No. XV 14th May, 2018

Office Timings

For employees

This is an official communication about the office timings to be followed by employees working for foreign clients. With regard to the time zone based on the geography of the client country, the working hours/timings are as under:

Employees for US client: working hours will be 6 am to 2 pm.

Employees for UK client: working hours will be 1:30 pm to 9:30 pm

Employees for Indian client: working hours will be 9: 30 am to 5:30 pm

For Housekeeping staff

Shift-1: 8:00 am to 4:00 pm

Shift-2: 2:00 pm to 8:00 pm

Saturday and Sunday is a holiday for all employees.

Strict action will be taken against defaulters. In case of any emergency, please inform your respective heads/managers.

XYZ

HR manager

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Question 10

(a) (i) What are the characteristics of effective communication? ***(2 Marks)***

OR

(ii) What is diagonal communication? ***(2 Marks)***

(b) (i) Complete the expression by supplying a suitable preposition or adverb particle. Choose your answer from the options given in brackets.

We will take _____ this issue when we meet next week. (up/on/over) ***(1 Mark)***

(ii) Rewrite the following sentence in Passive Voice

The customer should receive the delivery by Friday. ***(1 Mark)***

(iii) Rewrite the following sentence in Active Voice.

He will be given a ticket for over speeding by the police officer. ***(1 Mark)***

(c) Write an article of about 250 words on the topic "Global warming". ***(5 Marks)***

Answer

(a) Characteristics of effective communication

1. **Clear:** Any spoken or written communication should state the purpose of message clearly.
2. **Concise:** Brevity is the essence of business communication.
3. **Concrete:** The content of your communiqué should be tangible. Base it on facts and figures.
4. **Coherent:** Coherence is sequentially organized and logically presented information which is easily understood.
5. **Complete:** A complete communication conveys all facts and information required by the recipient.
6. **Courteous:** Courtesy implies that the sender is polite, considerate, respectful, open and honest with the receiver.
7. **Listening for Understanding:** Focus on the individual and his agenda. A perceptive listener is able to provide information as per the needs of the client
8. **Focus and Attention: Everyday work environment** Paying attention to the pertinent details is imperative for effective communication.
9. **Emotional Awareness and Control:** Managing your own and others emotions and communicating keeping in mind the emotional state of others helps in smooth interaction and breakdown of the communication process.

OR

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Diagonal Communication.

It is part of the formal communication section. It refers to the cross functional communication between different levels of employees in an organization. It is commonly found in large organization. Diagonal communication is recommended as it reduces the gaps between communication and encourages direct talks with the third party. For example a junior engineer directly reporting to the General Manager about the progress of a project.

(b) (i) We will take up this issue when we meet next week.

(ii) The delivery would be received by the customer by Friday (Passive voice)

(iii) The police officer will give him a ticket for over speeding (Active voice)

(c) Global Warming

The retention of extra heat by the Earth is known as Global warming. It is basically an increase in the amount of greenhouse gases in the air that results in more heat being trapped in the atmosphere. The green houses gases include carbon dioxide, methane, water vapour and ozone. This leads to an overall rise in the surface temperature of the Earth.

The temperature of the Earth has increase by about 1-2 degree Fahrenheit in the last 100 years and is continuing to increase further. The warming has led to the decrease of cold nights and increase in warm/summer days. Melting glaciers is also a result of global warming.

The amount of carbon di oxide in air has been increasing at an alarming rate. The main cause of this increase being burning of fossil fuels and deforestation. Production, distribution and combustion of fossil fuel also results in the emission of methane gas.

As responsible citizens of the Earth, we must take measures to curb the problem of global warming and save the environment. Use of renewable sources of energy, like solar energy should be promoted. Solar heater, solar cooker, solar coolers are some devices that run on the energy captured from the Sun. Farmers should be encouraged to use natural fertilizers that provide better yields and are environment friendly. Children in school should participate in 'plant a tree' campaigns. Afforestation is an easy and simple step towards saving our environment. Air pollution should be checked, probably by making catalytic inverters compulsory for all vehicles.

If the above measures are followed and every individual pledges to keep the environment clean, problems like global warming can be under control. Let us all pledge to GO GREEN

Question 11

(a) What are the main steps in the process of communication? ***(2 Marks)***

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(b) Select the correct meaning of idioms / phrases given below:

(i) Storm in tea cup

(1) Crave for something

(2) Drink tea often

(3) Get into quarrel

(4) Making a big issue out of a small thing. ***(1 Mark)***

(ii) To grease the palm

(1) Treat suffer

(2) To offer bribe

(3) To swim in deep sea

(4) To be in deep thought. ***(1 Mark)***

(iii) Rewrite the following sentences in the active voice:

The entire district was destroyed by cyclone. ***(1 Mark)***

(c) Write a memo letter informing the employees of all branches about the suspension order of Mr. Z, cashier, on charge of misappropriation of fund of the same office. ***(5 Marks)***

Answer

(a) Steps in the process of communication

(i) The purpose or reason

(ii) The content or message

(iii) The medium used for conveying the message (internet, written text, speech etc)

(iv) Transmitting the message

(v) Messages are often misinterpreted due to external disturbances. These factors disrupt communication

(vi) Receiving the message

(vii) Deciphering/decoding the message

(viii) Interpreting and figuring out what the real message is.

(b) (i) 4. Making a big issue out of a small thing

(ii) 2. To offer bribe

(iii) The cyclone destroyed the entire district. (Active voice)

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(c) Memo (suspension order of cashier)

XYZ Bank

36, NOIDA, Uttar Pradesh

Interoffice memo

Date: 14/05/2018

To: All employees of branch

From: Ms. ABC, General Manager

Reference: 44L/T2

Subject: Suspension order

This is to inform you that Mr. Z, cashier of XYZ bank, Noida, UP branch has been suspended on charge of misappropriation of funds. All concerned are requested to refrain from any transaction with him. If not, the bank authorities would not be held responsible.

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NOV 2018

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50.000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.* ***(4 Marks)***

(b) *A company registered under section 8 of the Companies Act, 2013, earned huge profit during the financial year ended on 31st March, 2018 due to some favorable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.* ***(4 Marks)***

(c) *Differentiate between Ascertained and Unascertained Goods with example.* ***(4 Marks)***

Answer

(a) **Subsequent or Supervening impossibility (Becomes impossible after entering into contract):** When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.

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

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In the given question, after Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of ₹ 50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Y is correct.

(b) A company that is registered under section 8 of the Companies Act, 2013, is prohibited from the payment of any dividend to its members.

The company in question is a section 8 company and hence it cannot declare dividend. Thus, the contention of members is incorrect.

(c) **Ascertained Goods** are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.' When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Unascertained goods: The goods which are not specifically identified or ascertained at the time of making of the contract are known as 'unascertained goods'. They are indicated or defined only by description or sample.

Question 2

(a) What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. ***(7 Marks)***

(b) Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. ***(5 Marks)***

Answer

(a) According to section 31 of the Indian Contract Act, 1872, contingent contract means a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

(a) **The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.** The condition may be precedent or subsequent.

(b) **The event referred to, is collateral to the contract.** The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) **The contingent event should not be a mere 'will' of the promisor.** The event

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should be contingent in addition to being the will of the promisor.

(d) **The event must be uncertain.** Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

(b) **Essential elements to incorporate Limited Liability Partnership (LLP)-** Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

(i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;

(ii) To have at least two partners for incorporation of LLP [Individual or body corporate];

(iii) To have registered office in India to which all communications will be made and received;

(iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.

(v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by Ministry of Corporate Affairs.

(vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

(vii) LLP Name.

Steps to incorporate LLP:

1. Name reservation:
   - The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
   - Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.
2. Incorporate LLP:
   - After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
   - e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners

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3. LLP Agreement
   - Execution of LLP Agreement is mandatory as per Section 23 of the Act.
   - LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Question 3

(a) "Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(I) Referring to the previsions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. ***(4 Marks)***

(II) A. State the liabilities of a minor partner both:

(i) Before attaining majority and

(ii) After attaining majority. ***(2 Marks)***

OR

B. State the legal position of a minor partner after attaining majority:

(i) When he opts to become a partner of the same firm.

(ii) When he decide not to become a partner. ***(2 Marks)***

(b) (i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. ***(3 Marks)***

(ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. ***(3 Marks)***

Answer

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

(i) A minor partner has a right to his agreed share of the profits and of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

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(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(II) A. (i) **Liabilities of a minor partner before attaining majority:**

(a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

(b) Minor has no personal liability for the debts of the firm incurred during his minority.

(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.

(ii) **Liabilities of a minor partner after attaining majority:**

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

OR

B. (i) **When he becomes partner:** If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(ii) **When he elects not to become a partner:**

(a) His rights and liabilities continue to be those of a minor up to the

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date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

(b) (i) **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

(ii) The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention in to a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

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

Question 4

(a) What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"? ***(6 Marks)***

(b) (i) Mr. A. Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of

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the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners. The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses. Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C.

Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. ***(3 Marks)***

(ii) Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P.

Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation. ***(3 Marks)***

Answer

(a) Caveat Emptor

In case of sale of goods, the doctrine 'Caveat Emptor' means '**let the buyer beware**'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Exceptions: Following are the exceptions to the doctrine of Caveat Emptor:

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sales of Goods Act, 1930].

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2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description**: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

(b) (i) Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit

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for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

(ii) A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Question 5

(a) Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending? ***(6 Marks)***

(b) 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. ***(6 Marks)***

Answer

(a) 1. According to section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

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The property in the goods or beneficial right in the goods passes to the buyer at appoint of time depending upon ascertainment, appropriation and delivery of goods. Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

   (a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

   (b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

(b) Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

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:

- **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil may

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be lifted

- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- **Where the device of incorporation is adopted for some illegal or improper purpose**: 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.

Question 6

(a) *Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.* ***(5 Marks)***

(b) *State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.* ***(4 Marks)***

(c) *Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company.*

Analyse the situation and decide whether Mr. X is free from his liability. ***(3 Marks)***

Answer

(a) **Modes of revocation of Offer**

(i) By notice of revocation

(ii) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.

(iii) **By non-fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

(iv) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

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(v) By counter offer

(vi) By the non- acceptance of the offer according to the prescribed or usual mode

(vii) By subsequent illegality

(b) Dissolution by the Court (Section 44 of the Indian Partnership Act, 1932):

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

(1) **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.

(2) **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.

(3) **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.

(4) **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.

(5) **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.

(6) **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.

(7) **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.

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(ii) Where the partners are not in talking terms between them.

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

(c) Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The doctrine of constructive notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company. Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.

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PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any three questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) Read the passage carefully and answer the questions given below :

"Your room is so ugly that no one can enter your room except yourself, son. Please take care of yourself at least. "Harish's mother was simply shouting at Harish. It was a beautiful Sunday morning and. Harish was in no mood to get up from bed even it was already 9.00 A.M. His mother had completed cleaning the whole house except Harish's Room. Harish got up and finished his daily routine. Still, he was only at the receiving end. "All your friends have finished morning walk, breakfast and completed their weekly homework given in the college. Just clean your room and take the whole garbage and throw outside." Harish was surprised. What is mom speaking about? Yesterday only his mom was teaching him about "Swachh Bharat Abhiyan" and today asking him to throw the garbage outside ! "What's this Mom? You advised me so much and today asking to throw garbage outside?" Harish had two options, either to follow his mother's last night advice or to follow her present order. He decided to follow the first and raised objection. His Mom said, "It was just a book son, I was teaching from that only. "Harish still objected and threw the garbage inside a dustbin, located around 200 metres away from his house.

Is it only a matter of reading only? Is really cleanliness not, necessary? Is it a duty of the politicians and Government servants? Harish asked himself all the questions to himself and decided to do what he thought to be proper. If all of us with a little effort try it in our daily life, slowly, but surely we can clean our environment. Only we are responsible for all this non-sense. Therefore we have to act. We have to avoid the use of polythene bags to save our environment; we have to give up our habit of throwing garbage and used plastic bags and bottles here and there. Otherwise day will come, when we and our future generation will be struggling to find a clean road to walk. Think seriously and act accordingly.

(i) What was the subject matter of the book, which Harish's mother was teaching him last night? ***(1 Mark)***

(ii) Who has to act properly to ensure a clean environment? ***(1 Mark)***

(iii) Who will suffer if we do not ensure clean environment? ***(1 Mark)***

(iv) Write a summary of the above paragraph. ***(2 Marks)***

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Read the passage :

(i) Make notes, using headings, sub-headings and abbreviations wherever necessary.

(3 Marks)

(ii) Write Summary.

A good business letter is one that gets results. The best way to get results is to develop a letter that in its appearance, style and content, conveys information efficiently. To perform this function, a business. letter should be concise, clear and courteous. The business letter must be concise, don't waste words. Little introduction or preliminary chat is necessary. Get to the point, make the point, and leave it. It is safe to assume that your letter is being read by a very busy person with all kinds of papers to deal with. Re-read and revise your message until the words and sentences you have used are precise. This takes time, but is a necessary part of a good business letter. A short business letter that makes its point quickly has much more impact on a reader than a long- winded, rambling exercise in creative writing. This does not mean that there is no place for style and even, on occasion, humour in the business letter. While it conveys a message in its contents, the letter also provides the reader with an impression of you, its author, the medium is part of the message. The business letter must be clear. You should have a very firm idea of what you want to say, and you should let the reader know it. Use the structure of the letter — the paragraphs, topic sentences, introduction and conclusion- to guide the reader point by point from your thesis, through your reasoning, to your conclusion. Paragraph often, to break up the page and to lend an air of organization to the letter. Use an accepted business letter format. Re-read what you have written from the point of view of someone who is seeing it for the first time, and be sure that all explanations are adequate, all information provided (including reference numbers, dates and other identification). A clear message, clearly delivered, is the essence of business communication. The business letter must be courteous. Sarcasm and insults are ineffective and can often work against you. If you are sure you are right, point that out as politely as possible, explain why you are right, and outline what the reader is expected to do about it. Another form of courtesy is taking care in your writing and typing of business letter. Grammatical and spelling errors (even if you call them typing errors) tell a reader that you don't think enough of him or can lower the reader's opinion of your personality faster than anything you say, no matter how idiotic. There are excuses for ignorance; there are no excuses for sloppiness. The business letter is your custom-made representative. It speaks for you and is a permanent record of your message. It can pay big dividends on the time you invest in giving it a concise message, a clear structure, and a courteous tone. ***(2 Marks)***

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Answer

(a) Reading comprehension

(i) The subject matter of the book was "Swacch Bharat Abhiyan"

(ii) We the citizens have to act properly to ensure a clean environment.

(iii) Our future generations will suffer if we do not ensure clean environment.

(iv) Harish's mother scolded him for not cleaning his room, asked him to clean his room and to throw the garbage out as he got up on a Sunday morning. He got confused as previous night his mother was teaching him about "Swacch Bharat Abhiyan" and this morning asked him to throw the garbage recklessly on the road. He acted responsibly, after cleaning his room; he disposed the garbage in a dustbin away from his house.

Every citizen is responsible for cleanliness, not just people in the government. With a little effort, we can keep our environment clean and tidy. We must avoid using polythene bags and littering else, our future generations will struggle for a clean environment.

(b) (i) Note Making

Business Letter

(i) Rprsnts the athr

(ii) Gives an idea about the athr's nature

(ii) Is a prmnt rcrd

A. Good Business Letter

(i) Gets results

(ii) Cnvys infrmtn effcntly

(iii) Characteristics:

(a) Concise

- Brief Intro.
- To the point
- Precise words

(b) Clear

- Cnvys a firm idea
- Has a structure/format with
  - Subject line
  - Intro

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- Main Para
- Cnclsn
- Adqt Info like
  - Ref. No.
  - Date
  - Other idntfctn

(c) Courteous

- Be polite
- Mention reason for your stance
- Specify action to be taken
- Avoid grmtcl/splng errors

Key:

Abbreviations:

Rprsnts: Represents

Athr: Author

Prmnt: Permanent

Rrcrd: Record

Cnvys: Conveys

Infrmtn: Information

Effcntly: Efficiently

Intro: Introduction

Para: Paragraph

Cnclsn: Conclusion

Adqt: Adequate

Ref. No: Reference Number

Idntfctn: Indentification

Grmtcl: Grammatical

Splng: Spelling

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(ii) Summary

A business letter represents the sender, gives an idea about the author's nature and creates a permanent record. A good business letter is one that conveys information efficiently. It must be:

Concise: Should briefly introduce the intent then explain the main point precisely. It saves reader's precious time and is much more impactful.

Clear: It must convey the idea firmly. It has a structure: subject/topic line, introduction, main paragraph and conclusion. The details mentioned viz. Reference number, dates, other identifications should be sufficient for the reader to make out the letter's intent/essence.

Courteous: Be polite while justifying your stance and specify action to be taken by the reader. Avoid grammatical and spelling mistakes.

Question 8

(a) Describe the term "paralanguage', a mode of communication. ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

Proficient

(1) Regular (2) Expert

(3) Weak (4) Reserve ***(1 Mark)***

(ii) Select a suitable ***antonym*** *for the following word:*

Support

(1) Disturb (2) Attend

(3) Oppose (4) Attack ***(1 Mark)***

(iii) Change the following sentence into indirect speech:

Suchi asked Sunil, "Are you interested to visit the temple?" ***(1 Mark)***

(c) Write a précis and give appropriate title to the passage given below :

Trees give shade for the benefit of others, and while they themselves stand in the sun and endure the scorching heat, they produce the fruit of which others profit. The character of good men is like that of trees. What is the use of this perishable body if no use is made of it for the benefit of mankind? Sandalwood, the more it is rubbed, the more scent dies it yield. Sugarcane, the more it is peeled and cut up into pieces, the more juice dies it produce. The men who are noble at heart do not lose their qualities even in losing their lives. What matters whether men praise them or not? What difference does it make whether they die at this moment or whether lives are prolonged? Happen what may, those who tread in the right path will not set foot in any other. Life itself is unprofitable to a man who does not live for others. To live for the mere sake of living one's life is to live the life of

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dogs and crows. Those who lay down their lives for the sake of others will assuredly dwell forever in a world of bliss. ***(5 Marks)***

Answer

(a) Paralanguage

It refers to the way you say something rather than the actual words used, the voice quality, intonation, pitch, stress, emotion and style of speaking communicates approval, interest or lack of it. Research estimates that tone accounts for 38 percent of communication.

(b) i. (2) Expert

ii. (3) Oppose

iii. Indirect speech: Suchi asked Sunil if he was interested to visit the temple.

(Objective questions, hence either right or wrong)

(c) Precis writing

Possible Titles: Good/Great Men/Souls never die

Good/Great Men/Souls live forever

Good men like trees, live for others. As trees, who face the heat of the sun themselves but bear fruits for others, good men serve others. They do not lose their character, even if they have to lose their lives. They are not bothered whether they are praised or not, or whether they live long or are short lived. They live forever in eternal bliss.

Question 9

(a) (i) Discuss "Cultural barrier in communication. ***(2 Marks)***

OR

(ii) What do you mean by (A) Vertical and (B) Horizontal formal communication? ***(2 Marks)***

(b) Choose the word which best expresses the meaning of the given word:

(i) Fiction

(1) Fantasy (2) Story

(3) Fact (4) Reality ***(1 Mark)***

(ii) Demote

(1) Rise (2) Upgrade

(3) Decline (4) Downgrade ***(1 Mark)***

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(iii) *Change the following sentence into indirect speech :*

Shalini gave order to her younger sister, "Go home immediately." ***(1 Mark)***

(c) *Write a circular addressing to the employees regarding re-organization of manpower and their responsibility in finance department of the company.* ***(5 Marks)***

Answer

(a) (i) **Cultural barriers**: Understanding *cultural aspects of communication* refers to having knowledge of different cultures in order to communicate effectively with cross culture people. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences between people from various countries, regions tribes and, religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications. Multinational companies offer special courses and documents to familiarize their staff with the culture of the country where they are based for work.

(ii) **Formal communication:** Formal communication, both oral and written, follows certain rules, principles and conventions in conveying the message. The hierarchy in the organization has to be followed. Formal format, style and language have to be used. The communication pattern can be vertical, horizontal or diagonal.

Vertical: Information can flow upwards or downwards in the organization. Data that is collected flows up to the top levels of management for review and decision making, while instructions and orders are passed down from the management/ seniors to the subordinates for implementation.

Horizontal: Horizontal communication that involves communication between two parts of the organization at the same level. For example, the managers of a project in a company may hold a regular daily, weekly or monthly meeting to discuss the progress of the project.

(b) i. 1. Fantasy

ii. 4. Downgrade

iii. Shalini ordered her younger sister to go home immediately.

(Objective type answers; either right or wrong)

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(c) Circular

Circular No. XV 13th Nov, 2018

Office Circular

Due to urgent work requirements in the Finance department, the following employees are temporarily shifted to the department for a period of 2 months (60 days) w.e.f Nov 14, 2018.

Name	Designation	Department	Current Responsibility (Finance Department)
Mr. WER	Upper Division Clerk	Accounts	Clerk
Mr. XYZ	Junior Accountant	Accounts	Accounts Assistant
Ms. PRT	Senior Accountant	Accounts	Accounts Officer
Ms. SDF	Project Manager	Information Technology	Technical Support Manager
Mr. LMN	Network Engineer	Information Technology	Engineer
Mr. RST	Office Assistant	Sales and Marketing Office	Assistant

The above employees are directed to report to Mr. X (Head Finance) at 10 AM tomorrow, Nov 14, 2018.

Office timings will be from 10 AM till 7PM

Saturday will be a working day; Sunday is a holiday.

JKL

Manager, HR

Question 10

(a) How do Technology barriers effects communication? Explain. ***(2 Marks)***

(b) (i) Fill up the blank with the most suitable preposition or adverb given in the brackets.

He apologized_____ his teacher for his misbehaviour. (to /from / with / against) ***(1 Mark)***

(ii) Rewrite the following sentence in Passive Voice.

Sunita said, "Please give me a glass of water." ***(1 Mark)***

(iii) Rewrite the following sentence in Active Voice.

The case should be handled by you carefully since it is critical in nature. ***(1 Mark)***

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(c) *Write a Newspaper Report in 250 words on the topic:*

"Daughter of Gardener Tops Board Exams." ***(5 Marks)***

Answer

(a) In the present world, communication modes are primarily technology driven. The communication technology is being constantly upgraded or new formats emerge ever so frequently. Anyone who is not abreast with these struggles to communicate effectively via the medium.

An individual is swamped with huge amount of information every day in the form of emails, texts and social updates. Multitasking is the norm these days. The information overload and trying to accomplish too many things together can result in gaps in communication and miscommunications.

(b) i. He apologized to his teacher for his misbehaviour.

ii. Sunita said, "A glass of water be kindly given to me"/ Sunita requested that a glass of water be given to her.

iii. You should handle the case carefully since it is critical in nature.

(c) Report

"Daughter of a Gardener Tops Board Exams"

Monday June 25, 2018

Sitting in a dingy servant quarters of a sprawling government bungalow in Lodhi Estate, Priya Kumari cannot stop smiling. Priya, daughter of a gardener Mr. Ram Swaroop, a class IV government employee has topped the class XII CBSE Board Examination in the humanities stream. She secured 98.8% marks. A student of Rajkiya Kanya Pratibha Vidyalaya, Sardar Patel Marg, is visibly elated. Eldest of the three siblings, she has always been a bright student, remarked her mother who prepared her daughter's favourite laddoos as the news broke. Her father is proud at her achievement and wants her to become an IAS officer.

Just a month into class XII, she had taken seriously ill with Meningitis that kept her bed ridden for two months. Her Principal granted her medical leave and allowed her to file her exam forms from the hospital. After resuming classes, she completed her pending assignments with the help of her teachers in a month and soon caught up with her peers. "we were confident that she would top in the region(Northern) but topping the Board exams nation-wide, came as a pleasant surprise", quipped one of her teachers. Talking about her daily regimen, she said "I studied regularly for about 5 hours daily after school and often stayed back to study at the school library." She attributes her success to her unflinching spirit , hard work and support of her parents, teachers and principal. Priya plans to pursue English Honours from Lady Sriram College and aspires to fulfil her father's dream by becoming an IAS officer. With her relentless efforts and spirit of steel, she certainly will!

(Staff correspondent)

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Question 11

(a) *Non-verbal is also one of the Broad Categories of Communication? Explain.* ***(2 Marks)***

(b) *Select the correct meaning of the following idioms/phrases among the alternatives given below*

(i) *Out of the blue*

(1) *Something happens that was unexpected.*

(2) *Something happens that was very much expected.*

(3) *From the sky*

(4) *From the Ocean* ***(1 Mark)***

(ii) *Day in and day out*

(1) *Coming and returning in day time*

(2) *The day of importance.*

(3) *Continuously*

(4) *Within a day* ***(1 Mark)***

(iii) *Rewrite the following sentence in the Active Voice :*

The deer was trapped by the cunning fox. ***(1 Mark)***

(c) *Mr. Mohit Agarwal, a resident of Meerut, have recently come across an advertisement, for a job vacancy in a leading TV Channel for the post of journalist, in The Times of India dated August 1, 2018.*

Draft a Resume alongwith a cover letter in response to the advertisement. ***(5 Marks)***

Answer

(a) **Nonverbal Communication:** Nonverbal communication is the process of communicating by sending and receiving wordless messages. These messages can aid verbal communication, convey thoughts and feelings contrary to the spoken words or express ideas and emotions on their own. Some of the functions of nonverbal communication in humans are to complement and illustrate, to reinforce and emphasize, to replace and substitute, to control and regulate, and to contradict the denoted message

Physical nonverbal communication: An individual's body language that is, facial expressions, stance, gestures, tone of voice, touch, and other physical signals constitute this type of communication. For example, leaning forward may mean friendliness, acceptance and interest, while crossing arms can be interpreted as antagonistic or defensive posture.

Research estimates that physical, non-verbal communication accounts for 55 percent of all communication. Smiles, frowns, pursing of lips, clenching of hands etc. transmit emotions which are not expressed through verbal communication.

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Paralanguage: The way you say something, more than the actual words used, reveal the intent of the message. The voice quality, intonation, pitch, stress, emotion, tone, and style of speaking, communicates approval, interest or the lack of it. **Research estimates that tone of the voice accounts for 38 percent of all communications**.

Aesthetic communication: Art forms such as dancing, painting, sculptor, music are also means of communication. They distinctly convey the ideas and thoughts of the artist.

Appearance: Appearance is usually the first thing noticed about a person. A well dressed and groomed person is presumed to be organized and methodical, whereas a sloppy or shabby person fails to make a favourable impression. Therefore, dressing appropriately in all formal interactions is emphasized.

The dress code in office is generally formal. It constitutes of formal suits, trousers with plain white or light coloured shirts and leather shoes. Bright colours, jeans, T - shirts, especially with slogans and other informal wear are frowned upon. For women formal two-piece trouser or skirt sets or formal ethnic wear like sarees, is permissible.

Symbols such as religious, status, or ego-building symbols

(b) i. 1. Something happens that was unexpected.

ii. 3. Continuously

iii. The cunning fox trapped the deer.

(c) Cover Letter

To Date: Nov 13, 2018

Manager(HR)

ABC TV

FGH Media Pvt Ltd

Mandi House

New Delhi.

Sir,

Subject: Application for the post of Journalist

Greetings for the day ! I am writing this letter to express my interest in the position of Journalist as advertised in the SDF national daily, Careers section dated August 1, 2018.

I fulfil all the educational and professional requirements as specified in the advert. I am a post graduate in Media Studies from ASD University and interned at renowned media

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houses (print and TV) I have two years of relevant experience. Currently I am heading the regional news section at XYZ TV at their Meerut office.

My detailed resume is appended herewith for your perusal. Looking forward for a positive response.

Best Regards,

Mohit Agarwal

36, Civil Lines,

Meerut.

UP.

Resume

Mohit Agarwal

36, Civil Lines

Meerut,UP

Phone: 98XXXXXXXX

Email: abc@xyz.com

OBJECTIVE:

To be associated with an organisation that offers tremendous opportunities for growth and autonomy, providing a challenging environment to harness my creative streak, innovative ideas and utilise my experience as a media correspondent to the maximum.

SUMMARY:

- One year of experience as a staff correspondent in CVB TV.
- Two years of experience as Head Regional News XYZ TV
- Proven skills in content planning, selection and presentation.
- Excellent Reporting skills in English and Hindi.

EXPERIENCE:

2016 – PRESENT Head Regional News XYZ TV Meerut

- Planning and deployment of staff correspondents
- Sponsorship Planning from corporate and medis houses
- Staff selection and Training
- Media Planning for regional corporate houses

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2015– 2016 Staff Correspondent CVB TV

- Capturing Events
- Conceptualising stories
- Presenter for "Khufia" section of Daily News

EDUCATION:

2014 Masters in Mass Comm, ASD University, New Delhi

2012 English(H), ASD University, New Delhi

INTERNSHIPS:

2014 Two month at World Journalists Association (Articles Section)

2013 4 months at CNN TV in News production and planning

SKILLS

- Well versed with Media Softwares
- Meticulous Planning and Execution skills with an eye for detail

PERSONAL DETAILS

Date of Birth 15 June, 1992

Marital Status Unmarried

Languages Known English, Hindi

DECLARATION

I solemnly declare that all the above information is correct to the best of my knowledge and belief.

Date: Nov 13, 2018

Place: Meerut (Mohit Agarwal)

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MAY 2019

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2018, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.*

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action? ***(4 Marks)***

(b) *Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ₹ 25,00,000 in name of the company.*

The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? ***(4 Marks)***

(c) *Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?* ***(4 Marks)***

Answer

(a) Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it

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is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the *Chinnaya Vs. Ramayya*, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

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

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

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

(b) Doctrine of Indoor Management

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

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

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

Thus,

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

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In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

(c) Various types of implied warranties

1. **Warranty as to undisturbed possession [Section 14(b) of the Sales of Goods Act, 1930]:** 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 or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Question 2

(a) "Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act, 1872?

(7 Marks)

(b) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. ***(5 Marks)***

Answer

(a) Mere silence is not fraud

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

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The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Silence is fraud:

1. **Duty of person to speak:** Where the circumstances of the case are such that it is the duty of the person observing silence to speak.

   Following contracts come within this category:

   (a) **Fiduciary Relationship:** Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

   (b) **Contracts of Insurance:** In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

   (c) **Contracts of marriage:** Every material fact must be disclosed by the parties to a contract of marriage.

   (d) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.

   (e) **Share Allotment contracts:** Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

2. **Where the silence itself is equivalent to speech:** For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

(b) **LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership**

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

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Question 3

(a) (i) What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? ***(2 Marks)***

OR

(ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? ***(2 Marks)***

(b) "Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? ***(4 Marks)***

(c) Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

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

Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

(6 Marks)

Answer

(a) (i) Effect of notice to an acting partner of the firm

According to Section 24 of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

OR

(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

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(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 and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

(b) Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

1. There was an **agreement** between all the persons concerned
2. The agreement was to **share the profits** of a business and
3. the business was **carried on by all or any of them** acting for all.

1. Agreement: Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.

2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

(c) A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract

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Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

(i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.

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

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

Question 4

(a) "A non-owner can convey better title to the bonafide purchaser of goods for value." Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930? ***(6 Marks)***

(b) M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? ***(6 Marks)***

Answer

(a) In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

(1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

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(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).

(2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

(3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

(4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]

(5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** 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 [Section 30(2)].

(6) **Effect of Estoppel**: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].

(8) **Sale under the provisions of other Acts**:

(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

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(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

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

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

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

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

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

(i) Action by the partners of M/s XYZ & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. A proper notice and opportunity of being heard has to be given to Mr. G.

(ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

(a) the power of expulsion must have existed in a contract between the partners;

(b) the power has been exercised by a majority of the partners; and

(c) it has been exercised in good faith.

Question 5

(a) M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

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(i) *Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".*

(ii) *Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?* ***(6 Marks)***

(b) *What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act, 2013? Mention the conditions of the issue and revocation of the licence of such company by the government.* ***(6 Marks)***

Answer

(a) (i) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means '**let the buyer beware**'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

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

(b) Formation of companies with charitable purpose etc. (Section 8 company):

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

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Such company intends to apply its profit in

- promoting its objects and
- prohibiting the payment of any dividend to its members.

Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Power of Central government to issue the license–

(i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.

(ii) The registrar shall on application register such person or association of persons as a company under this section.

(iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

Revocation of license: 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.

Question 6

(a) *Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872.* ***(5 Marks)***

(b) *"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?* ***(4 Marks)***

(c) *Popular Products Ltd. is company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 12 Lakh equity shares of ₹ 100 each and 8 Lakhs Preference Shares of ₹ 100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as subsidiary company of Popular products. Ltd., if it. Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.* ***(3 Marks)***

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Answer

(a) The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

(1) ***Relation between the parties:*** A person can be influenced by the other when a near relation between the two exists.

(2) ***Position to dominate the will:*** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

(a) **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

(b) **Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.

(c) **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

(d) **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.

(3) ***The object must be to take undue advantage*:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

(4) ***Burden of proof*:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

(b) Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows:

(i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for

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breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(ii) **No relief to partners for set-off of claim**: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) **Aggrieved partner cannot bring legal action against other partner or the firm**: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.

(iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

(c) In the present case, the total share capital of Popular Products Ltd. is ₹ 20 crores comprised of 12 Lakh equity shares and 8 Lakhs preference shares.

Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd. which amounts to less than one-half of its total share capital. Hence, Jovial Ltd. by virtue of share holding is not a holding company of Popular Products Ltd.

Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company. [Section 2(87) of the Companies Act, 2013]

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PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any three questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) Read the passage carefully and answer the questions given below:

Coral reefs are one of the most fragile, biologically complex, and diverse marine ecosystems on Earth. This ecosystem is one of the fascinating paradoxes of the biosphere. Found along the sea coasts they are formed in various shapes and sizes. They constitute as one of the beautiful creations of nature. Symbiotic cells of algae known as zooxanthellae carry out photosynthesis using the metabolic wastes of the coral thereby producing food for themselves; for their corals, hosts, and even for other members of the reef community. This symbiotic process allows organisms in the reef community to use sparse nutrient resources efficiently.

Unfortunately for coral reefs, however, a variety of human activities are causing worldwide degradation of shallow marine habitats by adding nutrients to the water. Agriculture, slash-and-burn·1 and clearing, sewage disposal and' manufacturing that create waste by-products all increase nutrient loads in these waters. Typical symptoms of reef decline are destabilized herbivore populations and an increasing abundance of algae and filter-feeding animals. Declines in reef communities are consistent with observations that nutrient input is increasing in direct proportion to growing human populations, thereby threatening reef communities sensitive to subtle changes in nutrient input to their waters.

(i) What are the indicators of reef decay? ***(1 Mark)***

(ii) How does Algae carry out the process of photosynthesis? ***(1 Mark)***

(iii) How is man responsible for destruction of Natural Reef? ***(1 Mark)***

(iv) Write a Summary of the above Passage. ***(2 Marks)***

(b) Read the passage :

(i) Make Notes, using Headings, Sub headings and abbreviations whenever necessary. ***(3 Marks)***

(ii) Write Summary,

In most sectors of the economy, it is the seller who attempts to attract' a potential buyer with various inducements of price, quality arid utility and it is the buyer who makes the decision. Where circumstances permit the buyer no choice because

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there is effectively only one seller and the product is relatively essential, government usually asserts monopoly and places the industry under price and other regulations. Neither of these conditions prevails in most of the health-care industry;

In the health-care industry, the doctor-patient relationship is the mirror image of the ordinary relationship between producer and consumer. Once an individual his chosen to see a physician and even then there may be real choice-it is the physician who usually makes all significant purchasing decisions whether the patient sho1:1ld. Return "next Wednesday;" whether X-rays are needed, whether drugs should be prescribed, etc. It is a rare and sophisticated patie11: who will challenge such professional decisions or raise in advance questions about price, especially when the ailment is regarded as serious.

This is particularly significant m relation to hospital care. The physician must certify the need for hospitalization, determine what procedures will be performed and announce when the patient may be discharged. The patient may be consulted about some of these decisions; but in the main it is the doctor's judgment that are final. Little wonder then that in the eyes of the hospital it is the physician who is the real "consumer." As a consequence, the medical staff represents the "power centre" in hospital policy and decision-making, not the administration;

Although usually there are in this situation four identifiable participants the physician, the hospital, the patient, and the payer the physician makes the essential decisions for all of them. The hospital becomes a extension of the physician; the payer generally meets most of the bonafide, a bill generated by the physician/hospital; and for the most part the patient plans a passive role. In routine or minor illnesses, or just plain worries, the patient's options are, of course, much greater with respect to use and price. In illnesses that are of some significance, however, such choices tend to evaporate or away: DISAPPEAR "my despair evaporated J. F. Wharton", and it is for these illnesses that the bulk of the health-care dollar, is spent. We estimate that about 75-80 percent of health-care expenditures are determined by physicians, not patients; For this reason, economy measures directed at patients or the general publics are relatively ineffective.

(2 Marks)

Answer

(a) (i) Indicators of reef decay include destabilized herbivore populations and an increasing abundance of algae and filter-feeding animals.

(ii) Algae carry out the process of photosynthesis by using the metabolic wastes of the coral thereby producing food for themselves, for their corals, hosts, and even for other members of the reef community.

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(iii) Man is responsible for decay of reef because activities such as agriculture, slash-and- burn land clearing, sewage disposal and manufacturing that create waste by-products all increase nutrient loads in these waters that cause degradation of reef.

(iv) Summary of the above passage-

Coral reefs are one of the most fragile and complex, marine ecosystem on Earth. Cells of algae known as zooxanthellae carry out photosynthesis using the metabolic wastes of the coral thereby producing food for themselves, for their corals, and for other members of the reef community. Man on other hand is destroying the coral reefs by carrying out agriculture, slash-and- burn land clearing etc. Thus the reef communities are in decline.

(b) (i) Notes, using Headings, Sub-headings and Abbreviations-

MONOPOLY IN HEALTH CARE INDUSTRY

A. Govt. regulates industry.

a. In Economics: the seller attracts buyers

b. In Monopoly: Govt. puts price/other curbs against industry.

c. but in HC Industry Govt. fails to put such curbs.

B. HC Industry.

a. Dr.- Pt. relationship = Producer-Consumer.

b. It's the Dr. who decides everything i.e. Pt. visit; test types;

c. Rarely the Dr.'s decision is questioned.

C. Hospital Care.

a. Dr. decides hospitalization need; procedures to be performed; discharge period.

b. Dr. decision final.

D. Participants.

a. Four participants - Dr. Hospital; Pt.; payer.

b. Payer pays bills as decided by hospital; dr.

c. Pt. is passive.

d. Health care expenses determined by physicians.

Key

1. Dr. = Doctor

2. Pt. = patient

3. HC = health care

4. Govt. –Government.

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(ii) Summary-

The health care industry has four participants namely the physician; the hospital' the patient; and the payer. The physician and hospitals are at the commanding position. They dominate over the patient and the payers with regard to type of medication and test needed. The medical staff is the power centre; the hospital comes secondary. Unlike other sector where the government puts checks to curb monopoly of the industry over the customers, restrictions do not work for the health care industry and hence any progressive measures started by the government towards patients and public becomes ineffective.

Question 8

(a) *Define V~1·tical & Chain Network under network in communication?* ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word.*

Crooked

(1) Straight (2) Tapering (3) Twisted (4) Circle

(1 Mark)

(ii) *Select a suitable antonym for the word given under:*

Predicament

(1) Injury (2) Ease (3) Accident (4) Horrifying

(1 Mark)

(iii) *Change the following sentence to indirect speech:*

Pari said to me "I have been living in London since last December" ***(1 Mark)***

(c) *Write a precis and give appropriate title to the 'passage given below:*

India has witnessed great expansion of educational opportunities since the attainment of independence. However, the disabled children have not yet benefited in any substantial manner from the growth in educational facilities.

Education of handicapped children, ultimately become more dependent and non productive. It is therefore believed that scarce national resources should not be wasted on them. Further, it has been our misconceived notion that the education of handicapped children requires highly specialized people and as such, it must essentially be very costly. Maybe, precisely for these wrong notions we have not been able to involve clinical and educational specialization programmers of training and education exclusively 'meant 'for handicapped children. It is encouraging to note that the new National Policy on Education has recommended the placement of such children in Regular schools so as to provide them integrated education along with normal students. The integrated education will take care of the different needs of various categories arid types of disabled children. The objective is to place the disabled children in ordinary

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schools for imparting education in the help of special teachers, aids and other resources. For fulfilling this objective an array, of the necessary infrastructure by way of training of teachers, provision of equipment and book etc. are some of the basic pre-requisition. Hopefully, the parents and their handicapped children will be greatly relieved when the latter are transferred to regular schools. ***(5 Marks)***

Answer

(a) Vertical and Chain Network

Vertical network: The vertical network is a formal network. It is usually between a higher ranking employee and a subordinate. This is a two-way communication in which immediate feedback is possible.

Chain Network: The communication pattern that follows the chain of command from the senior to junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees.

(b) (i) **Crooked = Twisted**

(ii) Predicament = Ease

(iii) Pari told me she had been living in London since last December.

(c) Précis

Education for handicapped children

Education opportunities for handicapped children are sparse as compared to the normal children. Expenditure on their education is treated as a wastage and rather non-productive. The view that education for handicapped requires higher costs and specialized people has led to discouragement towards development of measures towards the same. The National Education Policy recommends integrating the education for handicapped with the normal children with the help of specialized teachers and other aids. Training of teachers and necessary infrastructure shall help the handicapped children and shall relieve their parents regarding worries about their education.

Question 9

(a) (i) Discuss the "Gender Barrier" in communication. ***(2 Marks)***

Or

(ii) What do you mean by Informal Communication? ***(2 Marks)***

(b) Choose the word which best expresses the meaning of the-given word:

(i) ***Reckless***

(1) Cautious (2) Clear (3) Careless (4) Fearless

(1 Mark)

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(ii) ***Humongous***

(1) Minute (2) Huge (3) Hungry (4) Hassel

(1 Mark)

(iii) Change the following sentence into indirect speech.

She said "I am watching a' television show" ***(1 Mark)***

(c) Draft Newspaper Report on "Six Lane highway connecting two states inaugurated" to be published in a national newspaper. ***(5 Marks)***

Answer

(a) (i) Gender barriers may be defined as the communication gap created due to the different ways of inherent mindsets of men and women as given by nature. Men talk in linier, logical and compartmentalized manner whereas the women use both logic and emotion, and are more verbose. This may be cause of communication problem in an office where both men and women work side by side. Men can be held guilty of providing insufficient information, while women may be blamed for providing too much detail.

OR

(ii) Informal communication is the casual, friendly and unofficial. It is spontaneous conversation and exchange of information between two or more persons without conforming to the prescribed official rules, processes, systems, formalities, and chain of command. Informal communication is between family, friends, neighbours, members of community and other social relations that are based on common interests, tastes and dispositions. Information can flow from any source in any direction.

(b) (i) Reckless = Careless

(i) Humongous = Huge

(ii) She said that she was watching a television show.

(c) Six Lane Highway Connecting Two States Inaugurated

Indian Express

Anpara (UP), Feb 01, 2019.

The honourable Chief Minister of the Uttar Pradesh Mr. XY inaugurated the all new six lane highway between the States of Uttar Pradesh and Madhya Pradesh on 01st Feb, 2019. The six lane highway ranging 65 kilometers has been completed by Highway Authority of India at a record period of 24 months. The Highway will connect Anpara (U.P.) with Satna (M.P.).

The chief Minister in his inaugural speech said "the need that was being felt for the several years for a highway that shall connect the bordering areas of the two biggest

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States of India. I personal thank the local people who have given their land for construction of the highway".

The Highway has been constructed with an approved width of 43.6 Meters with speed limit indicators; caution indicators at every 6 Kilometers of the route. Energy saving LED lights have been put up at both sides of the Lanes so that perfect visibility of the road can be ensured at nights. The Toll Plaza has been set-up at 35 kilometers from Anapara near Shakti Nagar (U.P.)

The Six Lane Highway shall encourage the journey of the local people by road, thus reducing the traffic load on railways. The communication of commercial traffic shall be facilitated which will significantly reduce the time required earlier for the above purpose.

Source: PTI

Question 10

(a) *"The listener has to be objective, practical and control his emotions" Explain with reference to importance of listening in communication?* ***(2 Marks)***

(b) (i) *Change the sentence from Active to Passive Voice.*

The teacher always answers the students' questions. ***(1 Mark)***

(ii) *Change the sentence from Passive to Active Voice;*

Every night the office is vacuumed and dusted by the cleaning crew. ***(1 Mark)***

(iii) *Change the following sentence to indirect speech.*

She said "My Father came yesterday". ***(1 Mark)***

(c) *Write an article of about 250 words on the topic "The Fearless Indian Army":* ***(5 Marks)***

Answer

(a) A good listener does not only listen to the spoken words, but observes carefully the non-verbal cues to understand the complete message. He absorbs the given information, processes it, understands its context and meaning and forms an accurate, reasoned, intelligent response. The listener has to be objective, practical and in control of his emotions. Often the understanding of a listener is coloured by his own emotions judgements, opinions, and reactions to what is being said.

(b) (i) The student questions are always answered by the teacher.

(ii) The cleaning crew vacuums and dusts the office every night.

(iii) She said that her father had come the day before.

(c) The Fearless Indian Army

The Indian army is undoubtedly one of the finest armies in the world. Since prehistoric to modern times the Indian soldiers are one of bravest, fighting both for homeland as well as for ensuing peace even on foreign lands such as peace keeping force in Sri Lanka.

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Our soldiers never surrendered before enemies. Their motto has always been 'do or die'. During Indo- china war of October – November, 1962 and later on in the Indo-Pak war of September 1965, one Indian Soldier killed many soldiers of enemy armies on various fronts. During the World war II the Indian soldiers proved their mettle on the foreign land of Europe' Africa and the Korea on various missions.

The Indian army has proved their superiority whenever the neighboring country Pakistan challenged us. The Kargil war In 1999 was triggered by the spring and summer incursion of Pakistan backed armed forces into territory on the Indian side of the LOC around Kargil in State of Jammu & Kashmir. The Indian forces were prepared for a major high altitude offensive against Pakistani posts along the border in the Kashmir region. India had to move five infantry divisions, five independent brigades and 44 battalions of paramilitary troops to Kashmir. The total Indian army troop strength in the region reached to 7,30,000. The build-up included the deployment of around 60 frontline aircraft. The Indian army campaign to repel the intrusion left 524 Indian soldiers dead and 1,363 wounded, as per the data released by then Indian defence minister Shri George Fernandez on December 01, 1999.

Question 11

(a) Define the importance of Para language Hi Non Verbal Communication.

(b) Select the correct meaning of idioms/phrases given below:

(i) Cry over spilled milk

(1) Drain milk

(2) Complain about something that cannot be rectified

(3) Get into altercation with someone

(4) Misbehave with someone ***(1 Mark)***

(ii) Judge a book by its cover.

(1) Reading a book

(2) To detect a fraud

(3) Rely on outward appearances

(4) To be intimated by appearances ***(1 Mark)***

(iii) Change the sentence into Active Voice: The Grand Canyon is visited by thousands of tourists every year. ***(1 Mark)***

(iv) Cheese the word which best expresses the meaning of the given word:

Mesmerized

(1) Enthrall (2) Gruesome (3) Scary (4) Harmony

(1 Mark)

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(c) *Write a Formal E Mail: 'Mail is written by the Manager to the employees about the changed dress code for Republic day function including time and venue of function.*

(4 Marks)

Answer

(a) Paralanguage may be defined as the way a person says something. It reveals more than the actual words used, the intent of the message. The voice quality, intonation, pitch, stress, emotion, tone and style of speaking, communicants' approval, interest or the lack of it are depicted through paralanguage. Research estimates that tone of the voice accounts for 38 percent of all communications.

(b) (i) Complain about something that cannot be rectified.

(ii) Rely on outward appearances.

(iii) Thousands of tourists visit the Grand Canyon every year.

(iii) Enthrall

(c) To: Mr. A; Mr. B; Mr. c .....

Subject: Dress code for Republic Day Function as on 26th January, 2019

Dear sir/madam,

Greetings of the day.

As you all be aware that the Republic day is round the corner. Your company is organsing a flag hoisting followed by cultural program and traditional get together of all the rank and file of the organization including the executive heads.

The ceremony shall be held at 9.00 A.M. sharp at the ground in front of company's gate.

The company has decided a mandatory dress code for the occasion for all participants as-

For Men- White Kurta- Payjama

For Women- Saree preferably of white colour.

Dress code is mandatory.

Hope that all our esteemed employees and executives will grace the function by their benign presence at the time and venue in the prescribed dress code.

Thanks & Regards.

Sd/-

Company secretary,

XWZ Ltd.

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NOV 2019

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.

In the light of the Indian Contract Act, 1872, can X recover it from the Manager?

(4 Marks)

(b) Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31st March, 2019 was about ₹ 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so? ***(4 Marks)***

(c) State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. ***(4 Marks)***

Answer

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

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

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

(b) As per the provisions of Sub-Rule (7) of *Rule 3* of the *Companies (Incorporation) Rules, 2014*, an OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

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In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March, 2019 was Rs. 2.25 Crores. Even though two years have not expired from the date of its incorporation, since its average annual turnover during the period starting from 16th April, 2018 to 31st March, 2019 has exceeded Rs. 2 Crores, Mr. Anil can convert the OPC into a private limited company along with Sunil.

(c) Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930): Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

Question 2

(a) Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? ***(7 Marks)***

(b) Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. ***(5 Marks)***

Answer

(a) 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 abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Legal Rules Regarding Consideration

(i) **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.

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(ii) **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.*

(iii) **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.

(iv) **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.

(v) **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.

(vi) **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.

But where a person promises to do more that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.

(vii) **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.

(viii) **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.

(b) Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]

A LLP is not bound by anything done by a partner in dealing with a person if—

(a) the partner in fact has no authority to act for the LLP in doing a particular act; and

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(b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Question 3

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

(2 Marks)

OR

(ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act,1932? ***(2 Marks)***

(b) With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. ***(4 Marks)***

(c) Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹ 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹ 1,00,000 on 28.02.2019 and remaining ₹ 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjusted ₹ 50,000 towards the loan taken on·03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

(i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

(6 Marks)

Answer

(a) (i) Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)

According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

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OR

(ii) Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

(b) Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

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

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

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

(iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,

(v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

(c) Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

(i) As per the provisions of 59 of the Act, 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.

Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.

(ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

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Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.

(iii) As per the provisions of 61 of the Act, 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 payments shall be applied in discharge of each proportionately.

Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

Question 4

(a) What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? ***(6 Marks)***

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

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

(i) To what extent X will be liable if he failed to give public notice after attaining majority?

(ii) Can Mr. L recover his debt from X? ***(6 Marks)***

Answer

(a) Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

(c) a right of re-sale as limited by this Act. [Sub-section (1)]

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]

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These rights can be exercised by the unpaid seller in the following circumstances:

(i) **Right of lien (Section 47):** According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

(a) where the goods have been sold without any stipulation as to credit;

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

(c) where the buyer becomes insolvent.

(ii) **Right of stoppage in transit (Section 50):** When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

(iii) **Right to re-sell the goods (Section 54):** The unpaid seller can exercise the right to re-sell the goods under the following conditions:

1. Where the goods are of a perishable nature
2. Where he gives notice to the buyer of his intention to re-sell the goods
3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
5. Where the property in goods has not passed to the buyer

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

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

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

(A) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(B) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

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(i) In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

(ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Question 5

(a) Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Explain the basic law on sale by sample under Sale of Goods Act 1930?

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? ***(6 Marks)***

(b) "The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association. ***(6 Marks)***

Answer

(a) (i) **As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:**

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

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In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) **Sale by Sample: (Section 17 of the Sale of Goods Act, 1930):** As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

As per the provisions of Sub-Section (2) of section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) 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 reasonable examination of the sample.

(iii) In the instant case, the buyer does not have any option available to him for grievance redressal.

(iv) In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

(b) 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.

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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.

Question 6

(a) Explain the term 'Coercion" and what are the effects of coercion under Indian Contract Act, 1872. ***(5 Marks)***

(b) "Dissolution of a firm is different from dissolution of Partnership". Discuss. ***(4 Marks)***

(c) A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed? ***(3 Marks)***

Answer

(a) Coercion (Section 15 of the Indian Contract Act, 1872): "Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

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Effects of coercion under section 19 of Indian Contract Act, 1872

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.

(iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

(b) DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNERSHIP

S. NO.	BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
1.	**Continuation of business**	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	**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.
3.	**Order of court**	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	**Scope**	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	**Final closure of books**	It involves final closure of books of the firm.	It does not involve final closure of the books.

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

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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 assesse.

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

In the instant case, the four private limited companies were formed by A, the assesse, 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 of Mr. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

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

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any **three** questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) Read the passage carefully and answer the questions given below:

Being the daughter of a physics professor, Marie who was born in 1867 in Warsaw, Poland, was greatly influenced by the wonders of Science and technology. Since an early age, she displayed a blithe personality. Her fascination for learning prompted her to continue with her studies even after school. She become disgruntled, however, when she learned that the university in Warsaw was closed for women. Determined to complete higher education, she defiantly left Poland and in 1891 entered the Sorbonne, a French university, where she completed her doctorate in physics.

Marie met Pierre Curie at the Sorbonne along with some of the other greatest scientists of her day. Marie and Pierre were married in 1895 and spent many productive years working together in the physics laboratory. A short time after they discovered radium, Pierre was killed by a horse-drawn wagon in 1906. For Marie it was an horrible misfortune and heartbreaking event. Despondently she recalled their close relationship and the joy that they had shared in scientific research. The fact that she had two young daughters to raise by herself greatly increased her distress.

Curie's feeling of desolation finally began to fade when she was asked to succeed her husband as a physics professor at the Sorbonne. She was the first woman to be given a professorship at the world-famous university. In 1911 she received the Nobel Prize in physics for isolating radium. Although Marie Curie eventually suffered a fatal illness from her long exposure to radium, she never became disillusioned about her work. Regardless of the consequences, she had dedicated herself to science and to revealing the mysteries of the physical world.

(i) What did Marie did not like about the Warsaw University? ***(1 Mark)***

(ii) What was first step that Marie took towards her becoming a scientist? ***(1 Mark)***

(iii) How did Marie deal with the desolation caused by her husband's death? ***(1 Mark)***

(iv) Write a Summary of the above Passage. ***(2 Marks)***

(b) Read the Passage:

(i) Make Notes, using Headings, Subheadings and abbreviations whenever necessary. ***(3 Marks)***

(ii) Write summary

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People do not always do the things we want them to do. No matter' how reasonable or minimal our expectations may be, there are times when we are let down. Naturally, we feel upset and hurt when our expectations are not met. We dread confrontations because they are unpleasant and can damage relationships.

Yet not confronting a person does not solve the problem because unresolved issues also affect relationships in an adverse way. Actually, the real problem lies in our style of confrontation, not in the issue.

Typically, we use character-based confrontations. They help in venting our ange4rand hurt, but that is the only thing they do. They lead to angry show downs and bring all discussions to a grinding halt. It is important to remember that self-image is the most important possession of all human beings.

It is the way we view and regard ourselves in our own eyes and in the eyes of others. As self-conscious beings, we are actually aware of our· image and constantly work towards protecting it from any damage.

We also seek approval from others about our own self-image. We feel distraught if we sense that there. is even a slight threat to our self image, because our character is the essence of our lives. To ensure a rational dialogue over dashed expectations, we need to deploy issued based confrontations. They involve an explanation of. which actions have bothered us, in what manner and what changes we would like from the other person. ***(2 Marks)***

Answer

(a) **(i)** Marie did not like the fact that University in Warsaw was closed for women.

(ii) Marie left Poland in 1891 and joined Sorbonne University, France, where she completed her doctorate in Physics.

(iii) She got over her desolation when she became the first woman to join as a professor of Physics at the world renowned University of Sorbonne, France.

(iv) **Summary:**

Marie, daughter of a physics professor was born in 1867 in Warsaw, Poland. Disappointed at not being allowed to join University in Warsaw, she left Poland in 1891 to enter the University of Sorbonne, France and completed her doctorate in Physics.

In 1895, Marie married Pierre Curie a great scientist at Sorbonne. Having spent many years together in research, shortly after they discovered Radium, Pierre Curie was killed in 1906.

She got over her desolation when she became the first woman to join as a professor of Physics at the world-renowned University of Sorbonne. In 1911, she received the

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Nobel Prize in Physics for isolating Radium. Being overexposed to radium, she developed a fatal illness. She dedicated herself to the cause of science.

(b) (i) Human Nature

1. Hmn Ntr
   - 1.1 Expctns
     - 1.1.1 hurt when not met
   - 1.2 Cnfrntns
     - 1.2.1 are avoided by hmns
     - 1.2.2 are unplsnt
     - 1.2.3 dmgrlstnsps
     - 1.2.4 Styles of cnfrntns:
       - 1.2.4.1 Chrctrbsd
         - 1.2.4.1.1 Help vent anger
         - 1.2.4.1.2 Cse angry shwdns
         - 1.2.4.1.3 Halt dscssns
         - 1.2.4.1.4 Dtrmntl to slf-img
       - 1.2.4.2 Issue bsd
         - 1.2.4.2.1 Lead to rtnldlg
         - 1.2.4.2.2 Help anls:
           - 1.2.4.2.2.1 Prblm
           - 1.2.4.2.2.2 Cses
           - 1.2.4.2.2.3 Chngrqd in othrprsn
   - 1.3 Slf-img
     - 1.3.1 Is how we prcv ourselves
     - 1.3.2 How othrsprcv us
     - 1.3.3 We try avdngdmg
     - 1.3.4 Seek aprvlfrmothrs
     - 1.3.5 Bldschrctr

Key:

Hmn: Human/s

Ntr: Nature

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Expctns: Expectations
cnfrntns: confrontations
unplsnt: unpleasant
dmg: damage
rlstnsps: relationships
chrctr: character
bsd: based
cse: cause
shwdns: showdowns
dscssns: discussions
dtrmntl: detrimental
slf-img: self-image
rtnl:rational
dlg: dialogue
anls: analyse
prblm:problem
chng:change
rqd: required
othr:other
prsn:person
prcv: perceive
othr: other/s
avdng: avoiding
aprvl: approval
blds: builds

(ii) Summary

We feel hurt when our expectations from others are not met. We avoid confrontations, as they are displeasing and can affect relations. More often, it is the style of confrontation that causes problems rather than the underlying issue. We generally indulge in character-based confrontations, letting out our anger. Our image is important as it builds our character. Therefore, we must indulge in issue-

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based confrontations where we analyze our disagreements and identify the actions in others that bother us and to resolve the issue.

Candidates who have given abbreviations as below or any other suitable abbreviations, should also be given due credit. For Example:

Confrontation	- Confront
Expectation	- Expat
Self-Image	- Selfina
Problem	- Probe

Question 8

(a) Discuss the process of communication.

(b) (i) Choose the word which best expresses the meaning of the given word :

Abundant

(1) Plentiful

(2) Sufficient

(3) Enough

(4) Many ***(1 Mark)***

(ii) Select a suitable antonym for the word given under:

Adumbrate

(1) Elaborate

(2) Summarize

(3) Angry

(4) Happy ***(1 Marks)***

(iii) Change the following sentence to indirect speech:

Reena said, "Nobody can solve the problem on the earth". ***(1 Mark)***

(c) Write a Precis and give appropriate title to the passage given below:

DNA degrades quickly· after an: animal dies, so researchers once believed it impossible to find ancient genetic material. The search for primeval vestiges of DNA took off in the late 1980s after the. development of a technique called polymerase chain reaction (PCR), which copies minute quantities of DNA. Armed with PCR, scientists could look for tiny fragments of DNA that might have weathered the millennia unharmed.

In recent years, researchers have isolated DNA from 20-million-year-old magnolia leaves and extracted DNA from a 135-million-year-old weevil found in amber. Recently, a team

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extracts DNA from bone dating back millions of years for the first time. In the frenzied hunt for ancient DNA, microbiologist Scott R. Woodward may have bagged the biggest quarry. Drawing on lessons learned while growing up among the fossil-rich rocks of eastern Utah, Woodward and his team became the first people to find genetic material belonging to a dinosaur.

Woodward, whose grandfather was a coal miner, knew that mines in the area often contained dinosaur traces. After six months of looking Woodward pulled two bone fragments from a Cretaceous siltstone layer directly a top a coal seam. Impeded by an unstable mine roof) Woodward's team could not recover any more bone samples.

The siltstone apparently inhibited fossilization and preserved much of the original cell structure in the bone. Researchers isolated strands of DNA from both fragments and used-PCR to copy a segment that codes for a protein called cytochrome b. Once they had made many copies, they ·could determine the DNA sequence.

Throughout their work, the biologists took precautions to avoid contaminating the samples with modern DNA or ancient material found within the coal. According to Woodward, circumstantial evidence indicates that the bone fragments belong to one or two species of dinosaurs. Dinosaur tracks are abundant in this 'coal formation, and the bones visible in the mine were larger than those of a crocodile the biggest non-dinosaur known in these rocks. ***(5 Marks)***

Answer

(a) The process of communication entails :

1. The purpose or reason for the communication.
2. The framing of the content of the message
3. The medium used for conveying the message. (For example, internet, written text, speech, pictures, gestures and so on).
4. Transmitting the formulated message.
5. Messages are often misinterpreted due to external disturbances such as noise created by humans, traffic and natural forces. These factors can result in miscommunication.
6. Receiving the message.
7. Deciphering and making sense of the message. decode
8. Interpreting and figuring out what the receiver thinks is the real message.

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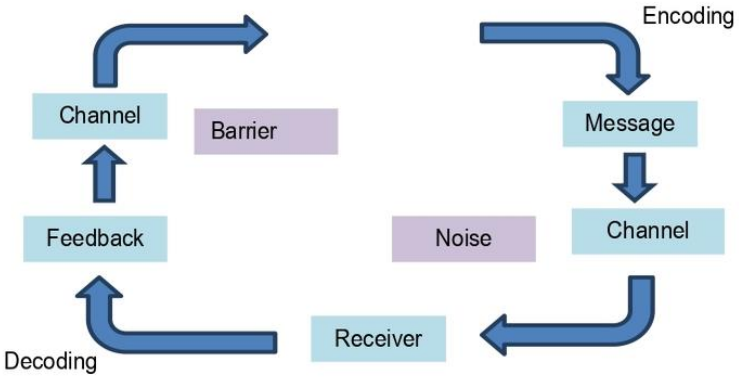

(b) **(i)** (1) Plentiful

(ii) (1) Elaborate

(iii) Reena commented/said that nobody could solve the problem on the earth.

(c) **Précis':**

Exploring ancient DNA: Innovations and Findings

Contrary to their earlier belief, in the late 1980s, scientists/researchers could search for remnants of DNA that existed in the primitive era/times after the development of the PCR technique (Polymerase Chain Reaction) that could copy minute quantities of DNA.

More recently, researchers have isolated DNA from 20-million-year-old magnolia leaves and successfully extracted DNA from a 135-million-year-old weevil found in amber. Microbiologist Scoot R. Woodward with his team were the first to find genetic material belonging to a dinosaur. He pulled two bone fragments from a Cretaceous siltstone layer from the top of a coal seam from which researchers isolated strands of DNA and used PCR to copy a segment that codes for a protein called Cytochrome b. DNA sequence was determined from the copies. Due care was taken to avoid contamination of samples with modern DNA. Evidence indicated that the samples found belonged to one or two dinosaur species.

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Question 9

(a) (i) Discuss the term "Virtual Communication" in communication. ***(2 Marks)***

OR

(ii) What do you mean by an "Attitude Barrier"? ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

Relevant

(1) Related

(2) Important

(3) Pertinent

(4) Common ***(1 Mark)***

(ii) Choose the word which best. expresses the meaning of the given word:

Unabashed

(1) Not fast

(2) Not Finding

(3) Not Embarrassed

(4) Not Angry ***(1 Mark)***

(iii) Change the following sentence to indirect speech:

He said, "Will you all come for the meeting?" ***(1 Mark)***

(c) Draft Newspaper Report on "Flood. situation grim in· southern, western states" to be published in a National newspaper. ***(5 Marks)***

Answer

(a) (i) Visual communication through visual aids such as signs, typography, drawing, graphic design, illustration, color and other electronic resources usually reinforces written communication. Sometimes, it may replace written communication altogether. Visual communication is powerful medium. It is the reason that the print and audio-visual media makes effective use of visuals to convey their message. Visuals like graphs, pie charts and other diagrammatic presentations convey clearly and concisely a great deal of information. They are an essential part of official presentations these days.

(ii) Attitude barriers refer to personal attitudes of employees that can affect communication within the organization. A proactive, motivated worker will facilitate the communication process, whereas a dissatisfied, disgruntled, shy, introvert or lazy employee can delay, hesitate in taking the initiative, or refuse to communicate.

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Attitude problems can be addressed by good management, periodic training and regular interaction with staff members.

(b) **(i)** (3) Pertinent

(ii) (3) Not Embarrassed

(iii) He asked if everyone would come for the meeting.

(c) **Flood situation grim in Western, Southern Indian states:** With heavy downpours, up to 330 mm, the flood situation continues to worsen particularly in the western and southern states of Maharashtra, Gujarat, Karnataka and Kerala. Over 500 people have died in landslide, deluge related incidents, thousands have gone missing, as many as 40 lakh people have been displaced and over 8 lakh people have been moved to relief camps in these states. Almost half a metre of rain fell in Vadodara alone in the last 24 hours, disrupting railways and air routes. Major rivers viz. Krishna and Tungabhadra are flowing at record high levels creating severe to extreme flood situation in the states. Red alert has been issued in most of these areas. The recent floods have damaged crops over 10 lakh hectares of land in Maharashtra, Karnataka and Kerala making survival even more difficult. According to the meteorological department, the situation is likely to improve in the days to come with meager or intermittent rains.

Union Home Minister has carried out an aerial survey of the worst affected areas and the Prime Minister has declared immediate monetary relief to these states. Campaigns are being carried out to appeal to masses in other states to contribute to the mass relief operations. Several NGOs and non profit agencies have join hands with the army in carrying out immediate relief operations in worst hit areas. Their volunteers are propagating the message through social media to collect clothes, food and funds for those stranded after deluge. To contribute to the Prime Minister's Disaster Relief Fund you may directly transfer funds through

NEFT details are as under:

Favour of: PM's Relief Fund

Account No.:

IFSC code::

Source: Press Trust of India.

Question 10

(a) Explain how emotional awareness and control helps in communication? ***(2 Marks)***

(b) (i) Change the sentence from Active to Passive Voice.

The audience loudly cheered the Prime Minister's speech. ***(1 Mark)***

(ii) Change the sentence from Passive to Active Voice

The Bird was killed by a cruel boy. ***(1 Mark)***

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(iii) Change the following sentence to indirect speech.

He said, "My Mother is writing letters". ***(1 Mark)***

(c) Write an article of about 250 words on the topic, "The Importance of water conservation". ***(5 Marks)***

Answer

(a) Emotions play a major role in our interactions with other people. They are a powerful force that affect our perception of reality regardless of how hard we try to be unbiased. In fact, intense emotions can undermine a person's capacity for rational decision-making, even when the individual is aware of the need to make careful decisions.

Emotional awareness is a necessary element of good communication. While interacting with another person or a group, it is important to understand the emotions you and he/ she/ they are bringing to the discussion. Managing your own and others emotions and communicating keeping in mind the emotional state of others helps in smooth interaction avoiding conflict resulting in successful completion of the communication process.

(b) **(i)** The Prime Minister's speech was cheered loudly by the audience.

(ii) A cruel boy killed the bird.

(iii) He told that his mother was writing letters.

(c) **Article: The Importance of Water Conservation**

-By ..... (Writer's name)

Water is one of the three basic resources for the survival of human kind besides air and food. More than 90 percent of human body is composed of water. Though water is abundantly available on our planet, with 2/3rd of earth covered by water, still fresh, clean water is a limited resource. Rivers, fresh water lakes, waterfalls, natural springs, ground water and rain are the natural resources of fresh water.

With indiscriminate rise in human population worldwide, the pressure on these natural resources has increased manifold. In many developing countries, due to incessant industrialization leading to exponential rise in migration to big cities/townships, contamination of ground water and rivers has not only led to scarcity of pure drinking water but also emerged as a serious health hazard.

Over reliance on ground water and rivers for construction/infrastructure development projects in urban areas and little or no awareness about water conservation has led to fast depletion of these natural resources. It is about time we realized the importance of clean water as water tables are fast declining, rivers and lakes are drying or being polluted/contaminated especially in thickly populated urban areas such as New Delhi,

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Hyderabad and Bangalore. According to a study these urban areas will have little or no ground water left that will lead to a drought like situation in a few years time.

As progressive citizens, we must take immediate measures to not only restrict our water consumption but also devise innovative conservation methods to provide sustainable sources of clean drinking water. While Rain water harvesting and reducing water consumption are effective methods of water conservation in urban areas, construction of small dams to provide huge water reservoirs holds the key to effective water conservation in rural areas.

Question 11

(a) *Define the areas where chain network of communication is found in an organization.* ***(2 Marks)***

(b) *Select the correct meaning of Idioms/Phrases given below:*

(i) *Takes Two to Tango*

(1) *Two people are required for dancing*

(2) *Two people are required for creating mischief.*

(3) *Two people required to clean floor.*

(4) *Two people required to help others.* ***(1 Mark)***

(ii) *Storm in a teacup*

(1) *Crave for something*

(2) *Least importance*

(3) *Emergency situation*

(4) *Make a big issue out of a small thing.* ***(1 Mark)***

(iii) *Change the sentence into Active Voice;*

They will be given a ticket for over speeding by the police inspector. ***(1 Mark)***

(iv) *Choose the word which best expresses the meaning of the given word.*

Myriad

(1) *Dramatic*

(2) *To Fetch*

(3) *Many*

(4) *Confusion* ***(1 Mark)***

(c) *Write a letter to a bank requesting them to stop payment of a cheque which has been reported lost.* ***(4 Mark)***

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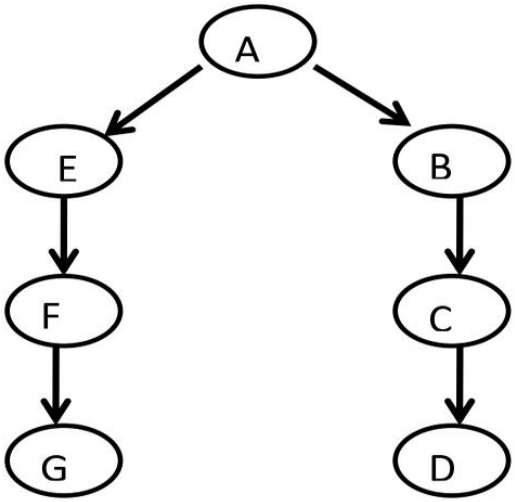
Answer

(a) Communication pattern that follows the chain of command from the senior to the junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees. The supervisor/ manager/ CEO gives commands or instructions to those working under him/her in the organization.

B, C, D and E, F, G are the subordinates to A in the organizational hierarchy and receive commands from 'A' as shown in the diagram. The chain network often takes up time, and communication may not be clear.



Chain of Command

(b) **(i)** (2) Two people are required for creating mischief.

(ii) (4) Make a big issue out of a small thing.

(iii) The police inspector will give them a ticket for over speeding.

(iv) (3) Many

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(c) Letter:

From:

ABC Private Limited,

Nariman Point, Mumbai

November 13, 2019

XYZ Bank

106 Millenum Tower

Prashant Lok

Mumbai-02

Sir/Madam,

Subject: Request to Stop Payment of the Cheque No. xxxxxx

On behalf of ABC Pvt Ltd, I request you to stop payment of the cheque number xxxxxx issued against our company Bank Account Number 123-456-789 maintained by your branch. This cheque was issued to our vendor PQR Ltd amounting to ₹ 3 Lakh dated XX/XX/XXXX and has been misplaced as reported by their accounts department. We will issue a new cheque after your response.

Thanks for your cooperation.

Regards,

ASD

Senior Manager, Accounts

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NOV 2020

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y.*

Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872? ***(4 Marks)***

(b) *ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores and issued Non-Convertible Debentures worth ₹ 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹ 100 Crores and Non-Convertible Debentures stands at ₹ 120 Crores.*

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013? ***(4 Marks)***

(c) *Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930.* ***(4 Marks)***

Answer

(a) The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian

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Contract Act, 1872. Hence, Mr. C in the given case cannot recover the amount of ₹ 10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

(b) As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the -

(a) Paid-up equity share capital; and

(b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹ 15 crore, which is less than requisite control of 20% of total share capital (i.e. 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

(c) The doctrine of Caveat Emptor given under the Sale of Goods Act, 1930 is subject to the following exceptions:

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].
2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. [Section 16(2)].
5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description**: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods

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do not correspond with both the sample and description or either of the condition [Section 15].

7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

Question 2

(a) *Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.* ***(7 Marks)***

(b) *State the circumstances under which LLP may be wound up by the Tribunal under the Limited Liability Partnership Act, 2008.* ***(5 Marks)***

Answer

(a) Definition of Fraud under Section 17 of the Indian Contract Act, 1872:

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

As per Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

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Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

(b) Section 64 of the Limited Liability Partnership Act, 2008 states circumstances in which limited liability partnership (LLP) may be wound up by Tribunal.

(a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(c) if the LLP is unable to pay its debts;

(d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Question 3

(a) (i) What do you mean by 'Partnership at will' as per the Indian Partnership Act, 1932?

(2 Marks)

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(ii) Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932. ***(2 Marks)***

(b) Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

(i) What are the consequences of Non-Registration of Partnership firm?

(ii) What are the rights which won't be affected by Non-Registration of Partnership firm?

(4 Marks)

(c) In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? ***(6 Marks)***

Answer

(a) (i) 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.

OR

(ii) A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

(i) the power of expulsion must have existed in a contract between the partners;

(ii) the power has been exercised by a majority of the partners; and

(iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in *bona fide* interest of the business of the firm.

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(b) (i) Consequences of Non-registration of partnership firm:

Under Section 69 of the Indian Partnership Act, 1932 non-registration of partnership gives rise to a number of disabilities. Though registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:

(a) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.

(b) **No relief to partners for set-off of claim**: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

(c) **Aggrieved partner cannot bring legal action against other partner or the firm**: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.

(d) **Third-party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

(ii) Non-registration of a firm does not, however, affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

(c) (i) As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

(ii) Promise to pay time-barred debts - Section 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a

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time barred debt, the agreement is valid and binding even though there is no consideration.

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

Question 4

(a) Explain any six circumstances in detail in which non-owner can convey better title to Bona fide purchaser of goods for value as per the Sale of Goods Act, 1930. ***(6 Marks)***

(b) 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, 2019, 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. ***(6 Marks)***

Answer

(a) In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.

(1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

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(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).

(2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

(3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (**Section 29**).

(4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [**Section 30(1)**].

(5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** 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 **[Section 30(2)].**

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

(6) **Effect of Estoppel**: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].

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(8) **Sale under the provisions of other Acts**:

(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

(b) (i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 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.

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

Question 5

(a) Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?

(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?

(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid? ***(6 Marks)***

(b) What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013. ***(6 Marks)***

Answer

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

(a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

(c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

(i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (Two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.

(ii) It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they

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are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

(b) Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection of the environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.
- Operates under a special licence from the Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.
- On revocation, the Central Government may direct it to
  - Converts its status and change its name
  - Wind – up
  - Amalgamate with another company having similar object.
- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of Section 8 company.

Question 6

(a) *Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872.* ***(5 Marks)***

(b) *Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.* ***(4 Marks)***

(c) *Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis., on whether Mike Limited would be*

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called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013? ***(3 Marks)***

Answer

(a) Distinction between Wagering Agreement and Contract of Insurance

	Basis	Wagering Agreement	Contract of Insurance
1.	**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.
2.	**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).
3.	**Insurable Interest**	There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has an insurable interest in the life or property sought to be insured.
4.	**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
5.	**Enforceability**	It is void and unenforceable agreement.	It is valid and enforceable
6.	**Premium**	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
7.	**Public Welfare**	They have been regarded as against the public welfare.	They are beneficial to the society.

(b) Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

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(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of section 27:

It may be observed that the workings of the two clauses of Section 27 are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

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

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

(ii) conducts any business activity in India in any other manner.

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

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SECTION B – BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Attempt any **three** questions from the remaining **four** questions.*

Question 7

(a) *Mr. Ramesh, the HR Head of ABC Insurance Co. Ltd., who is having charge of training and development also, during his twelve years with the Company. He had the experience of training and developing numerous employees, only to see many of them leave the firm after getting their advanced degrees. The Company has a Policy of reimbursement of 90% of the cost incurred on tuition fee, books etc. for acquiring such qualifications. Only those employees who have taken prior permission of HR before enrolment in such program/degree and completed three years of service are eligible for seeking the reimbursement. A proof of its popularity was that most of the junior and middle level managers had availed this facility to advance their qualifications.*

Mr. Kumar, a Sales Executive, who had joined the Company just three years ago had also availed the aforesaid facility for pursuing a course in Business Management and had recently competed his master's degree in business management' and submitted the same to the Company for seeking reimbursement and recording additional qualifications acquired in official records.

Mr. Ramesh congratulated him and added the additional qualifications acquired by him in the Company records and assured him to consider him for higher position keeping in view his qualifications in near future and of course subject to availability of vacancy as per the approved Organisation Chart. Further Mr. Ramesh allowed reimbursement of 90% of the cost incurred as per the Policy. Mr. Kumar on his achievement when he came to see and thank HR

Head, but was strongly taken aback when he expressed his intention to leave the Company in favour of a competitor because he did not see any future for himself in ABC Insurance Co. Ltd. Head HR was annoyed as this had happened so many times in the past. He immediately rushed to see the Marketing Director to seek support for reviewing and discontinuing the Policy of educational reimbursement with immediate effect or to put a condition that all those employees who acquired such qualifications and reimbursed 90% of the expenses shall at least serve the Company for a minimum of 3 years after seeking such reimbursement.

(i) *What could be the possible reasons behind employees quitting the Company after acquiring higher qualifications?* ***(2 Marks)***

(ii) *Is there any need to amend or abandon the Policy of educational reimbursement?* ***(1 Marks)***

(iii) *What measures do you suggest for overcoming high employee attrition problem?*

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(2 Marks)

(b) Read the Passage :

(i) Make Notes, using Headings, Subheadings and abbreviations whenever necessary.

(3 Marks)

(ii) Write Summary Recycling is simply the process of reusing the items from which utility can still be derived. It is important to recycle waste so that we can at least conserve some. of our natural resources for the generations to come. Many products such as paper, cardboards, and cups come from trees. In fact trees are our natural assets; you can conserve trees by recycling the paper products as by doing so we can minimize the number of trees cut down a year. This is one form of waste recycling.

Recycling waste will not only save our natural resources but will also help save energy. By simply recycling an item or making a basic fix to it, we can save all the energy that would have been consumed in the process of making it. The same example can be taken with plastic items. A large amount of energy can be saved by simply reusing the plastic items. To recycle waste is to simply reduce pollution. By recycling plastic material, we can reduce air pollution as well as water pollution. Plastic factories produce a large amount of smoke while producing plastic material at the same time; if we don't have a proper waste disposal system then those waste emissions will cause water pollution. Recycling helps reduce pollution too.

In simple words, recycling waste is essential for both the natural environment and humans. To sum up, recycling minimizes the need for raw materials so that the rainforests can be preserved. Great amounts of energy are used when making products from raw materials. Recycling requires much less energy and therefore helps to preserve natural resources. One needs to know the importance of recycling; at the same time being earth friendly can help make our planet a better place to live in. ***(2 Marks)***

Answer

(a) (i) The employees after acquiring higher qualifications expect a sizeable salary increment and career growth commensurate with their current qualifications. In absence of a concrete incentive or promotion policy aligned with qualification enhancement scheme, the employees start looking for better opportunities with other companies in the sector and quit the job as soon as they get it.

(ii) The policy needs to be amended. Abandoning the policy will be demoralizing for the employees.

(iii) Attrition can be contained in this organization by amending the current reimbursement policy. Here are a few recommended changes:

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1. The policy needs to be aligned with a concrete incentive/promotion policy, with lucrative perks such as fully paid family holidays once a year.
2. The policy should be offered to only the top 20% of employees who have been performing consistently for the last 3 years.
3. The employees availing the policy should be bound by a commitment to serve the company for a stipulated period or pay double the amount, by making them sign a bond.
4. The cost of qualification enhancement should be paid in 36 equal monthly instalments to make them stay at least for the next three years.
   a. by the company
   b. by the employee as an interest free loan
5. Periodically benchmarking salary structure and perks vis-a-vis other organisations in the sector to ensure employee satisfaction.
6. Adopting a robust periodically reviewed appraisal policy to ensure the inclusion of the deserving employees
7. Providing fast-track career growth options, to the selected employees on the basis of their performance
8. Ensuring a conducive, cordial and harmonious work environment, where team spirit is strongly inculcated and encouraged
9. Establishing a strong ethical leadership that encourage employees to voice their grievances and initiate discussions and resolve their issues/predicaments objectively.
10. Sponsoring and conducting periodic short and long term training programs /courses to enable employees to upgrade knowledge and enrich their skills.

(b) (i) Note Making, Recycle, Reuse, Reduce

- Recylg,
  - 1.1 Prcsng. /reusing waste, create utility items
  - 1.2 Examples
    - 1.2.1 Prcsng. used paper, cups and cardboards
      - 1.2.1.1 Bnfts.
        - 1.2.1.1.1 Cnsrvs. envrmt.
        - 1.2.1.1.2 Mnmzs. Ctng. of trees
    - 1.2.2 Reusing plastic

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1.2.2.1 Bnfts.

1.2.2.1.1 Rdcs. air poltn.

1.2.2.1.2 Rdcs. water poltn.

1.3 Bnfts.

1.3.1 Cnsrvs. natural resources

1.3.2 Cnsrvs. energy

1.3.3 Rdcs. poltn.

1.3.4 Mnmzs. the need for raw material

1.3.5 Eco-friendly

1.3.6 Helps create better lvng. cndtns.

Key to Abbreviations:

1. Recyclg.- recycling
2. Prcsng. -processing
3. Bnfts.-benefits
4. Cnsrvs.-conserve
5. Envrmt..-environment
6. Mnmzs.-minimizes
7. Ctng.-cutting
8. Rdcs.-reduces
9. Poltn.-pollution
10. Lvng.-living
11. Cndtns.-conditions

(ii) Summary

Recycling can be termed as processing or reusing waste to create new utility items. For example, used paper, cardboards and paper cups can be recycled to create new ones. This helps in conserving the environment by minimizing cutting of trees. Plastic can be reused thus, reducing air and water pollution. Recycling has many benefits including conservation of natural resources and energy, reducing pollution, minimizing the need for raw material, helping to create better living conditions on our planet earth.

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Question 8

(a) *Body language speaks the truth while speaker may play with words to hide the truth, comment?* ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word:*

SCINTILLATING

(1) *Smouldering*

(2) *Glittering*

(3) *Touching*

(4) *Warming* ***(1 Marks)***

(ii) *Select a suitable antonym for the word given under:*

Fidelity

(1) *Commitment*

(2) *Inconstancy*

(3) *Ambitious*

(4) *Devotion*

(iii) *Change the following sentence to indirect speech Varun Said, "Every Kid should learn coding".* ***(1 Marks)***

(c) *Write a precis and give an appropriate title to the passage given below:*

These days, it is not unusual to see people listening to music or using their electronic gadgets while crossing busy roads or travelling on public transport, regardless of the risks involved. I have often wondered why they take such risks, is it because they want a sense of independence, or is it that they want to tell everybody to stop bothering them ? Or is it that they just want to show how cool they are? Whether it is a workman or an executive, earphones have become an inseparable part of our lives, sometimes even leading to tragicomic situations.

The other day, an electrician had come to our home to repair iron. We told him in detail what the fault was and needed to be done. But after he left, I found that the man had done almost nothing and iron was not working even after repair. It later turned out that he could not hear our directions clearly because he had an earphone on. Many of such earphones addicts commute by the Metro every day. While one should not be grudge anyone their moments of privacy or their love for music, the fact is 'iPod oblivion' can sometimes be very dangerous.

Recently, I was travelling with my wife on the Metro. Since the train was approaching the last station, there weren't too many passengers. In our compartment, other than us,

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there were only two women sitting on the other side of the aisle. And then suddenly, I spotted a duffel bag. The bomb scare lasted for several minutes. Then suddenly, a youth emerged from nowhere and picked up the bag. When we tried to stop him, he looked at us, surprised. Then he took off his earpieces, lifted the bag, and told us that the bag belonged to him and that he was going to get off at the next station.

We were stunned but recovered in time to ask him where he was all this while. His answer was that in the compartment, leaning against the door totally involved in the music. He had no clue about what was going on around him. When he got off, earplugs in his hand, we could hear strains of the song. ***(5 Marks)***

Answer

(a) In most cases the body language comprising facial expressions, gesticulation and posture genuinely convey the speaker's intent which might not match with his speech. However, seasoned fraudsters and criminals can control their body language to match their words, hiding their true intent.

(b) **(i)** Glittering

(ii) Inconstancy

(iii) Varun suggested/said/advised that every kid should learn coding.

(c) **Precis**

Title: Ubiquitous Earphones and Probable Risks / Risks of Earphone

People are hooked to gadgets so much so that they use them while travelling and even crossing roads. Possible reasons are that they do not want to be bothered or they want to project themselves as being tech-savvy. Almost everybody is seen with earphones on, busy in their own virtual world, oblivious to the real world around. This leads to unexpected and serious events occurring in the most mundane situations. Skilled labour like electricians with the earphones on, do not pay heed to instructions thus do not deliver as per expectations, wasting precious man-hours and efforts. In public transport such as Metro, carefree passengers recklessly keep their luggage in any random corner. While they are engrossed in music, comfortably dozing off during travel, their unattended luggage sometimes leads to alarming situations such as bomb hoax causing an unnecessary ruckus and severe inconvenience to other commuters.

Question 9

(a) What is formal communication, explain. ***(2 Marks)***

OR

Encoding the matter is an important element of communication, comments? ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

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Concise

(1) Brief

(2) Better

(3) Important

(4) Interesting **(1 Marks)**

(ii) Choose the word which best expresses the meaning of the given word:

Cryptic

(1) Pertinent

(2) Common

(3) Mysterious

(4) Loyalty **(1 Marks)**

(iii) · Change the following sentence to indirect speech:

"Do you suppose you know better than your own father?" jeered his angry mother.

(1 Marks)

(c) Draft Newspaper Report on "Project to interconnect rivers in India" to be published in a national newspaper. **(5 Marks)**

Answer

(a) Formal communication, both oral and written, follows certain rules, principles and conventions in conveying the message. The hierarchy in the organization has to be followed. Formal format, style and language have to be used. The communication pattern can be vertical, horizontal or diagonal.

- Vertical: Information can flow upwards or downwards in the organization. Data that is collected flows up to the top levels of management for review and decision making, while instructions and orders are passed down from the management/ seniors to the subordinates for implementation.
- Horizontal: Horizontal communication that involves communication between two parts of the organization at the same level. For example, the managers of a project in a company may hold a regular daily, weekly or monthly meeting to discuss the progress of the project.
- Diagonal: Cross-functional communication between employees at different levels of the organizational hierarchy is described as diagonal communication. Diagonal communication is increasingly common in larger organizations. It reduces the chances of distortion or misinterpretation by encouraging direct communication between the

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relevant parties. For example, a junior engineer reports directly to the General Manager regarding the progress on the project.

OR

Encoding is an important step in the process of communication as it converts/envelopes the message contents into a format/version that is amenable to be sent through the medium. It adds certain specific details to the message so that it can be easily sent across the medium and can be easily interpreted by the receiver at the other end of the medium. This step is built-in or rendered by the medium. For example for a message to be sent through an e-mail, it requires us to compose a message and then copy the contents of the message into the given interface. Without this step, the message cannot be sent. Likewise, if we want to send a message through postal service we need to enclose the message into an envelope with postal stamps in order to send it. In verbal communication, we add diction, tone, modulation, gestures and facial expressions to make the communication more effective.

(b) **(i)** **Brief**

(ii) Mysterious

(iii) His angry mother jeered and asked (jeeringly asked) the son whether (if) he supposed he knew better than his father.

(c) **Project to interconnect rivers in India**

By XXX

India is bestowed with abundant natural water resources in the form of a network of perennial and seasonal rivers flowing across the length and breadth of its landscape. But the lack of homogeneity of water resources has led to large scale research and implementation for water resources development in India in order to boost agricultural production, improve domestic water supply, and address the energy crisis.

The interlinking of rivers in India is an ambitious mega-project in engineering called the National River Linking Project (NRLP). It is in the planning stage that aims to connect Indian rivers through a network of reservoirs canals and dams. This would facilitate transfer of water from surplus regions in the north-east with major rivers i.e. the Ganges and the Brahmaputra, to the water scarce areas of western and southern India. It will connect 37 rivers and will have 3,000 storages.

The project will substantially increase the utilizable water resource and hydropower potential. Other major advantages include prevention of floods striking every year in the Ganga and Brahmaputra region, saving human lives, livelihood, preventing huge material losses and devastation. This will also provide water throughout the year to farmers who

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will not be dependent on monsoon. The land under irrigation will increase by about 15%. The inland waterway transportation for nearly 15,000 km will be developed.

However, the mammoth mega-project poses a lot of challenges. Apart from an exorbitant cost estimate and the time required, there are various environmental and socio-economic and political challenges and concerns attributed with the project. Clearing the forest and adjoining land earmarked for reservoirs will change the landscape and environment drastically causing irreversible climate changes in the area. Local inhabitants including a sizeable tribal population will have to be rehabilitated, which might be faced with a strong backlash from their leaders and various NGOs. These concerns need to be diligently studied, researched and addressed before the project is embarked upon.

Source: National Water Planning Institute (NWPI)

Question 10

(a) Explain how listening for Understanding helps in communication. ***(2Marks)***

(b) (i) Change the sentence from Active to Passive Voice.

Question - The crew cleaned the entire stretch of highway. ***(1 Marks)***

(ii) Change the sentence from Passive to Active Voice.

Question - The house was remodelled by the homeowners to help it sell. ***(1 Marks)***

(iii) Change the following sentence to indirect speech.

Question - Socrates said, "Virtue is its own reward." ***(1 Marks)***

(c) Write an article of about 250 words on the topic, "The Pros and cons of online education in India". ***(5 Marks)***

Answer

(a) As we 'hear' conversations, news, gossip and many other forms of speech, we do not listen to it carefully and therefore are not able to understand or partially understand or misunderstand the message. A good listener does not only listen to the spoken words, but observes carefully the nonverbal cues to understand the complete message. He absorbs the given information, processes it, understands its context and meaning to form an accurate, reasoned, intelligent response. The listener has to be objective, practical and in control of his emotions. Often the understanding of a listener is coloured by his own emotions, judgments, opinions, and reactions to what is being said. While listening for understanding, we focus on the individual and his agenda. A perceptive listener is able to satisfy a customer and suggest solutions as per the needs of the client.

(b) (i) The entire stretch of the highway was cleaned by the crew.

(ii) The homeowners remodelled the house to sell it. / The homeowners remodelled the house to help it sell.

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(iii) Socrates said that virtue is its own reward.

(c) The Pros and Cons of online education in India

By S. Kumar

Online education in India, though not a new concept in higher education has become an inevitable reality for learners across the board at all levels including school colleges and universities. The recent paradigm shift in knowledge delivery from a physical classroom to a virtual one due to the sudden onslaught of COVID-19 pandemic has raised many a debate about the efficacy of online learning and credibility of courses offered.

There are many advantages of online learning, foremost is the flexibility and convenience of time and place. One can pursue course contents anytime, anywhere just using their smart devices. Short term courses can be pursued by enthusiastic learners ranging from enhancing their skills in communication, team dynamics and leadership to learning new languages, IT programming, online accounting software solutions and many others. These courses are much more cost effective as compared to regular class-room courses thus economically viable to a large spectrum of learners. Such courses inculcate discipline, responsibility, commitment and focus.

Before signing up for one, accreditation, relevance and contents of these courses must be duly verified and checked. Since there is little or no one-on-one interaction with the teachers, it may lead to learning gaps. With hardly any stipulation or protocol, most learners may lose interest or focus, may quit the course before completion or defer the end term exam, defeating the purpose of joining.

Online learning poses many constraints for young school children. They are not able to develop many skills that they would in a physical classroom such as interaction with peers and following instructions. Practical experiments which are integral to the senior school curriculum are difficult to demonstrate and explain. Therefore, online education is an effective mode of learning for mature and conscientious learners only.

(Source.....)

Question 11

(a) Explain Wheel & Spoke network in communication. ***(2 Marks)***

(b) Select the correct meaning of Idioms/Phrases given below:

(i) To be a mastermind

(1) To be a pioneer

(2) To. be an entrepreneur

(3) To be an amateur

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(4) *To be a villain* **(1 Marks)**

(ii) *At wit's end*

(1) *Impoverished*

(2) *Drained*

(3) *Completed*

(4) *Perplexed* **(1 Marks)**

(iii) *Change the sentence into Passive voice:*

Question - Will you tell me a story? **(1 Marks)**

(iv) *Choose the word which best expresses the meaning of the given word:*

COMBAT

(1) *Conflict*

(2) *Quarrel*

(3) *Feud*

(4) *Fight* **(1 Marks)**

(c) *Write a letter to an applicant informing him about the postponement of his interview date.* **(4 Marks)**

Answer

(a) In Wheel and Spoke network in communication there is a single controlling authority who gives instructions and orders to all employees working under him/her. All employees get instructions directly from the leader and report back to him/her. It is direct and efficient for a small business/company, but an inappropriate way of communication in a large organization with many people. A company with many employees needs a complete hierarchy of decision makers. In a big organisation, this network will fail if the central figure is not competent.

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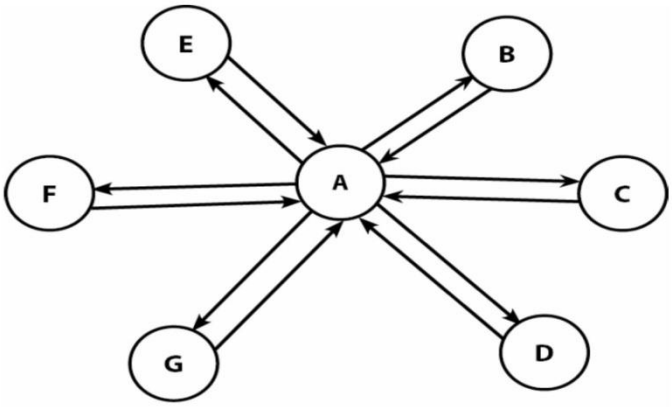

Wheel and Spoke Network

(b) (i) To be a pioneer

(ii) Perplexed

(iii) Will a story be told to me by you?

(iv) Fight

(c) Letter

ABC Consultants Pvt. Ltd,

21, Spearhead Arcade,

Eastern Avenue Road,

Jackson Heights,

New Delhi xx00xx.} Sender's address

To Date: Dec 10, 20xx

Mr. XYZ,

45-A, BSD Enclave,

DFG Lane,

Begumpur,

New Delhi xx00xx

Dear Mr. XYZ,

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Subject: Postponement of personal interaction to be held on Dec 15, 20xx

Greetings! We hereby inform that your personal interaction with the HR team for the position of **Senior Manager Finance** scheduled to be held on Dec 15, 20xx has been postponed. The same has been rescheduled for Monday, Dec 21, 20xx at 10 a.m.

We regret any inconvenience caused and look forward to discussing your prospective role in context with the recent changes brought about by our management in the finance team.

Best Regards,

S. Kumar

Manager, HR

ABC Consultants Pvt. Ltd.

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JAN 2021

PAPER – 2: BUSINESS LAWS & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of `10 Lakhs as consideration to Mr. S in order to induce him to retire.*

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. ***(4 Marks)***

(b) *ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:*

Directors and their relatives	*190*
Employees	*15*
Ex-employees	
(shares were allotted when they were employees)	*20*
Others	*20*

(Including 10 joint holders holding shares jointly in the name of father and son)

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion.

(4 Marks)

(c) *What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?* ***(4 Marks)***

Answer

(a) Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void.

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The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

In the given case, Mr. S, who was going to be retired after two years was proposed by Mr. D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that Mr. D offered Mr. S a sum of ₹ 10 lakh as consideration. Mr. S refused initially but later accepted the said offer to receive money to retire from his office.

Here, Mr. S's promise of sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay ₹10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

(b) In the given case, ABC Limited was having 245 members in the company. The Board of Directors of said company proposes to convert it into private company. In lines with Section 2 (68) of the Companies Act, 2013, a private company by its Articles, limits the number of its members to 200.

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.

It is further provided that, following persons shall not be included in the number of members-

(i) Persons who are in the employment of the company; and

(ii) 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.

As per the facts, ABC Limited has members constituting of Directors & their relatives, employees, Ex-employees and others including 10 joint holders. In line with the requirement for being a private company, following shall be restricted to be as members i.e., Directors & their relatives & joint holders holding shares jointly constituting 200 members (190+10).

Accordingly, ABC Limited when converted to private company shall not be required to reduce the number of members as the number of members as per requirement of a private company, is fulfilled that is of maximum 200 members.

(c) **Rules of Auction sale:** Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

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

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(ii) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

(iii) **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.

(iv) **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.

(v) **Reserved price:** The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and

(vi) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 2

(a) Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance. ***(7 Marks)***

(b) State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. ***(5 Marks)***

Answer

(a) Definition of Acceptance: In terms of Section 2(b) of the Indian Contract Act, 1872 the term acceptance is defined as "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Legal Rules regarding a valid acceptance

(1) Acceptance can be given only by the person to whom offer is made. In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.

(2) Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

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(3) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.

(4) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

(5) **Time:** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.

(6) **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

(7) **Acceptance by conduct/ Implied Acceptance:** Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

(b) As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -

- with intent to defraud creditors of the LLP,
- or any other person, or
- for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

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Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

Question 3

(a) (i) What do you mean by "Particular Partnership" under the Indian Partnership Act, 1932? ***(2 Marks)***

OR

(ii) Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities? ***(2 Marks)***

(b) "Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. ***(4 Marks)***

(c) Mr. B makes a proposal to Mr. S by post to sell his house for ` 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

(i) On which date, the offer made by Mr. B will complete?

(ii) Discuss the validity of acceptance.

(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? ***(6 Marks)***

Answer

(a) (i) Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking, the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

OR

(ii) Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

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Liabilities: He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

(b) **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners.

An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that:

(1) there should be an agreement to share the profits as well as the losses of business; and

(2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

(c) **(i)** According to Section 4 of the Indian Contract Act, 1872, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".

When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

Thus, the offer made by Mr. B will complete on the day when Mr. S reads the letter, i.e. 13th April 2020.

(ii) **When communication of acceptance is complete:** Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

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Revocation of Acceptance: The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.

(iii) It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

Question 4

(a) *What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the Sale of Goods Act, 1930?* ***(6 Marks)***

(b) *M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.*

Explain with reasons:

(i) *Whether P's private estate is liable for the price of furniture purchased by the firm?*

(ii) *Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive?* ***(6 Marks)***

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Answer

(a) Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Point of differences	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

Breach of condition be treated as a breach of warranty

Section 13 of the Sales of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract.

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

(b) According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

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In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

In the light of the facts of the case and provisions of law:

(i) Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.

(ii) It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Question 5

(a) Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M? ***(6 Marks)***

(b) Explain Doctrine of 'Indoor Management' under the Companies Act, 2013. Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'. ***(6 Marks)***

Answer

(a) (i) **According to Section 15 of the Sale of Goods Act, 1930,** where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(I) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

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In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

(ii) When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr. M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr. T to replace it with the fan he wanted.

(b) **Doctrine of Indoor Management (The Companies Act, 2013):** According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of ***Royal British Bank v. Turquand***. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

(a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

(c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

Question 6

(a) The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872. ***(5 Marks)***

(b) Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. ***(4 Marks)***

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(c) *SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.* ***(3 Marks)***

Answer

(a) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872). In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule.

In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** Conditions to be fulfilled under section 25(1)
   - (i) It must be made out of natural love and affection between the parties.
   - (ii) Parties must stand in near relationship to each other.
   - (iii) It must be in writing.
   - (iv) It must also be registered under the law.

   A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:
   - (i) The services should have been rendered voluntarily.
   - (ii) The services must have been rendered for the promisor.
   - (iii) The promisor must be in existence at the time when services were rendered.
   - (iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].
4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gift i.e. when gift is made by a donor and accepted by the donee, the rule, no consideration no contract does not apply.

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6. **Bailment:** In case, the delivery of goods is made by one person to another for a particular purpose, without transfer of ownership, no consideration is required.

7. **Charity:** If a promisee undertakes the liability on the promise of another person to contribute to charity, the contract shall be valid without consideration.

(b) **Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932):** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again in order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, -

by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

a partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

(c) **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, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of ₹ 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, SK Infrastructure Limited is a Government company.

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SECTION B – BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Attempt any **three** questions from the remaining **four** questions.*

Question 7

(a) Read the passage carefully and answer the questions given below:

Success of any organization depends on offering quality products at competitive prices. All over the world, it is being realized that quality control be ensured through inspection and test alone. Every department and individual has a contribution to make in the achievement of quality. Quality product at competitive prices is the most significant factor in determining the long - run success of any organization. High quality of products can give a competitive edge to an organization. On the other hand, good quality generates satisfied customers who reward the organization with continued patronage and favourable word of mouth advertising.

Growth in consumer quality awareness has put a greater strain on businesses. Consumer demand and dynamic technological changes have opened up new and highly competitive markets. The quality of goods and services can no longer be taken for granted.

The rapid growth of the service sector has also introduced new perceptions of quality management. Institutions, such as the Government, banks and hospitals do not produce tangible goods. The interaction between employees and customers is much more critical in such organizations. As a result, the skills, attitudes and training of service personnel affect the quality of the services delivered. Information processing represents a large component of the work done by service organizations and poses special quality considerations. Errors in computer billing, or airline and hotel reservations are the results of poor quality control of computer software and data input systems.

In View of globalization of markets, Governments have begun to realize that quality is essential to international trade and the national economy. Therefore, public purchasing authorities have been instructed to buy goods that conform to the quality standards.

(i) In what manner good quality products give rewards to organizations? ***(1 Mark)***

(ii) Most significant factor which determines the long run success of an organization ? ***(1 Mark)***

(iii) Quality of goods and services cannot be compromised by organizations, give reasons. ***(1 Mark)***

(iv) Write the summary of the above passage. ***(2 Mark)***

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(b) *Read the Passage :*

Whether one runs a large business, or is starting out with a new venture, or works as a corporate professional, chances are that at some point, one would be required to make a business presentation. Whether you are selling a product to a client, sharing your vision with your employees, or looking for new investors for your business, your presentation will always matter.

Making a good business presentation can be intimidating - you want to capture as much information as possible to answer any prospective questions from your audience, yet you want to keep your audience constantly engaged and interested. So, what makes a good presentation?

It is important to connect with your audience with a story. And no, it doesn't mean your presentation needs to be the most exciting work of fiction. Take your audience on a journey. When trying to convince potential investors, make them see the success you are striving for and what it will do for you and for them. To win over your employees with your new staff policy, take them through the journey of why you are introducing a new policy and how does it benefit them. Tell personal stories, give analogies and cite examples. Get your audience emotionally involved and you will be more likely to get them to side with you.

You want to keep your audience engaged at all times. Do not overwhelm them with a lot of information. Settle on three to five key messages that you want them to absorb and stick with them. You do not want to include everything. Instead, choose out powerful points that you want to make. It is important to keep your presentation as straightforward and concise as possible.

At the same time, you need to know your content extremely well. While you keep your presentation short and to the point, it is no excuse for you to not have more detailed information regarding the subject of your presentation. It is likely you would need to answer questions from your audience at the end of the presentation. You must review all pertinent information and key facts and figures before your presentation. Not only will it help you answer questions later, but it will also give you more confidence during your presentation, so you refer to your notes less and connect with your audience more.

In the end, a business presentation is about selling ideas. Do your researches well, describe your ideas crisply, weave them into an interesting story and you are more likely to succeed.

(i) *Make notes, using headings, sub - headings and abbreviations whenever necessary.*

(ii) *Write Summary.*

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Answer

(a) (i) Good quality products can give reward to organization in following ways:

It gives long term success to any organization.

It can give competitive edge i.e., higher profit and increased market share.

It leads to satisfied customers thus playing a significant role in increasing the customer base.

(ii) Providing quality products at competitive prices is the most significant factor that determines the success of the organization in the long run.

(iii) Increased awareness amongst customers regarding quality has led organizations to constantly improve the quality of products and services by adopting new technologies which satisfies the customer's demands to remain competitive. Thus, businesses cannot ignore this aspect, if they intend to sustain longer in the market.

(iv) Organizations across the world whether in the manufacturing or service sectors pin their success on offering quality products and services at competitive prices. This is the mantra for long-term sustainable growth of any business. With growing consumer awareness about quality, markets have become highly competitive and more and more businesses embracing new technologies. In critical service sectors viz. healthcare, government and many online data/information processing services, quality relies on skilled and trained workforce. International trade and economy can grow only if stringent quality standards are maintained.

(b) (i) Note Making

Business Presentation

1. Essen. for

1.1 Large Bsns, startups & prfs.to

1. sell product to clients
2. share vision

1.1.2.1 new staff policy and benefits

3. find new investors

1. discuss mutual benefits

2. Objectives

2.1 Engage the aud.

2.2 Tell a story

2.3 Give prsnlegs./anlgs.

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3. Do's and Don'ts

3.1 research well

1. cap. det. info.
2. Do not prt. excess info.
3. Prt. 3-5 pts.
4. Expln. Briefly &prcly.
5. Prep. Cont. well
   1. Rvw. Imp. Info.
   2. Facts & data

Key:

- Bsns.: businesses
- Prfs.: professionals
- Aud.: audience
- Prsnl.: personal
- Egs.: examples
- Anlgs.: analogies
- Cap.: capture
- Det.:detailed
- Info.: information
- Prt.: present
- Expln.: explain
- Prcly.: precisely
- Prep.: prepare
- Cont.: content
- Rvw.: review
- Imp.: important

(ii) Summary

Preparation and presentation of Business Presentations are essential skills for owner of a large business, startup or a working professional alike. It is a useful tool to provide product details to clients, to share your ideas and vision with employees

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about new policies and their benefits or to find investors to expand or diversify. The objective is to engage the target audience by spawning a story around your ideas by narrating personal anecdotes. For a good presentation you must research the subject in detail, do not swarm the audience with too much information. You must stick to 3-5 points and explain them with brevity and precision. Prepare the subject well and review important facts, figures and data.

Question 8

(a) *Emotional barriers affect communication, discuss.* ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word:*

Repulsive

(1) *Attractive*

(2) *Normal*

(3) *Disgusting*

(4) *Confused*

(1 Mark)

(ii) *Select a suitable antonym for the word given under:*

Gratify

(1) *Frustrate*

(2) *Depress*

(3) *Discourage*

(4) *Distress*

(1 Mark)

(iii) *Change the following sentence to indirect speech:*

He said, "The horse died in the night". ***(1 Mark)***

(c) *Write a precis and give appropriate title to the passage given below:*

Gratitude implies thankfulness or an appreciation of benefits conferred together with a desire, when practicable, to return those benefits. It should be distinguished from thanks, which is too often a matter of words and not accompanied by a feeling of thankfulness or by those actions which indicate a grateful mind. The grateful man feels joy at the kindness of his benefactor and cultivates a respect that is akin to love.

In almost all the relations of ordinary life the feelings of gratitude should be aroused. The child owes thanks to his parents for food, clothes, education and tender care; the scholar to his teachers for the training of his intelligence; personal friends to one another for mutual services.

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The frequent use of the phrase, "Thank you," though often not more than a polite convention, nevertheless shows the universal belief in the necessity for cultivating a grateful attitude towards those who do something for us, however small that service be. As Citizens, there are few who have no cause to be grateful. Great generals who have given devoted service gratuitously, statesmen, poets and philosophers, all those who have stood for right, justice and freedom of thought, have conferred inestimable benefits upon their countrymen.

When deeds are impossible, the expression of thanks is the best that can be done. The inscriptions on the tombs and monuments erected by a nation to its great men are an expression of thanks in words. As for deeds, an old story will serve as an excellent illustration. An old man was found planting fruit trees by a friend who came to him and said, "Why do you plant trees, the fruit of which I enjoy. I now plant trees that those who come after may enjoy fruit." '

In conclusion, no good man wishes to give pain, especially to those who have done him good. The ungrateful man hurts the feelings of his benefactor and cannot, therefore, be a good man. ***(5 Marks)***

Answer

(a) One of the chief barriers to open and free communications is the emotional barrier. Anger, fear of criticism or ridicule, mistrust of person, suspicion of intentions, jealousy, anxiety and many more feelings and sentiments we carry within us, affect our communication ability and quality. A person who is upset and disturbed cannot pass on or receive information appropriately and objectively. His/her emotions will colour his perception and assessment of the communication.

(b) **(i)** (3) Disgusting

(ii) (1) Frustrate

(iii) He said that the horse had died in the night.

(c) Precis

Title: Attitude of Gratitude

Gratitude means being genuinely thankful or showing heartfelt appreciation for those who have helped you in need and readiness to reciprocate the kindness. Conventionally, 'Thank You' is used frequently to show politeness. Yet a grateful attitude should be cultivated towards those who do even a small service for us. There are many army Generals, statesmen, poets and philosophers who have selflessly contributed their services. As a token of gratitude, monuments and inscriptions are erected to commemorate their service. Practically, one can plant trees so that the later generations can enjoy the benefits. A conscientious individual would always wish well for everyone without any expectations.

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NOTE: Precis should be one third of the given text.

Question 9

(a) (i) *Define circuit and star network under network in communication.* ***(2 Marks)***

OR

(ii) *Discuss the term "physical non-verbal communication" In communication.* ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word:*

Nostalgic

(1) *Sharp*

(2) *Painful*

(3) *Delighted*

(4) *Homesick* ***(1 Marks)***

(ii) *Choose the word which best expresses the meaning of the given word:*

Economise

(1) *Reduce*

(2) *Save*

(3) *Minimise*

(4) *Accumulate* ***(1 Marks)***

(iii) *Change the following sentence into indirect speech:*

He said to him, "Please wait here till I return." ***(1 Marks)***

(c) *Draft a circular to warn the employees of Packing Department not to participate in strike.* ***(5 Marks)***

Answer

(a) Circuit Network:

When two persons communicate with each other sending messages and feedbacks, they form a communication circuit. Therefore, it is known as circuit network. The two people interacting can be colleagues placed at the same hierarchical level in the organization.

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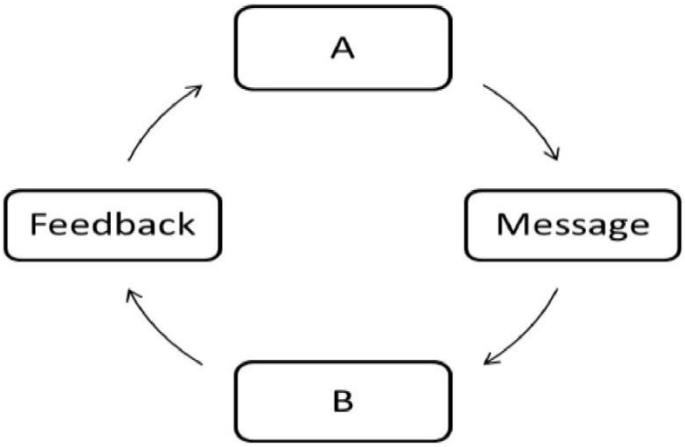
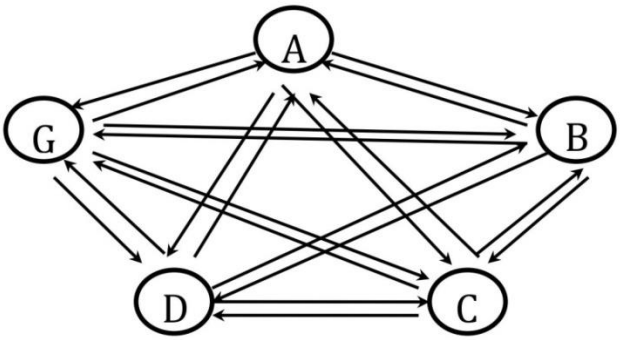


Circuit Network

Star Network:

The star network communication has multiple channels of communication open between all members. This network propagates group communication and is essential where teamwork is involved. The members communicate and exchange information with each other freely and without hindrance or hesitation.



Star Network

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OR

Physical Non-verbal Communication

An individual's body language that is, facial expressions, stances, gestures, touches, and other physical signals constitute this type of communication. For example, leaning forward may mean friendliness, acceptance and interest, while crossing arms can be interpreted as antagonistic or defensive posture.

Research estimates that physical, non-verbal communication accounts for 55 percent of all communication. Smiles, frowns, pursing of lips, clenching of hands etc. transmit emotions which are not expressed through verbal communication.

(b) **(i)** (4) Homesick

(ii) (2) Save

(iii) He requested him to wait there till he returned.

(c) **XXX Ltd**

CIRCULAR

No.: xxx/xxx/xxx **Date:** xx-xx-xxxx

To: All Employees of Packing Department

It has been reported that a section of employees working in the Packing Department of the Company are proposing to go on strike on xx-xx-xxxx (date) to fulfil some unusual demands. It is hereby made known to all concerned employees that the proposed strike is illegal and unlawful and employees whosoever participate in such a strike shall be subjected to disciplinary action as per the company's service rules and other applicable laws.

Sd/-

XYZ

Manager, HR

Question 10

(a) How do organizational structure barriers affect communication? ***(2 Marks)***

(b) (i) Change the sentence from Active to Passive Voice.

Rama was making a kite. ***(1 Marks)***

(ii) Change the sentence from Passive to Active Voice.

The lion was shot by the hunter. ***(1 Marks)***

(iii) Change the following sentence to indirect speech.

Father said to his son, "Work hard for success in life". ***(1 Marks)***

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(c) *Write an article of about 250 words on the topic. "The Pleasures of reading".* ***(5 Marks)***

Answer

(a) Communication problems occur when the systems, structures and processes in the organization are not clear or have gaps in them. If the chain of command is unclear, a person may not know whom to contact for a particular issue. Inappropriate information transmission systems, lack of supervision, and unclear role and responsibility demarcations lead to confusion and inefficiency.

(b) **(i)** A kite was being made by Rama.

(ii) The hunter shot the lion.

(iii) Father advised/said to/told his son to work hard for success in life.

(c) **The Pleasures of Reading**

By: XYZ

Ever since humankind invented the printed word, reading has been a learning exercise for some, pastime for many others. Undoubtedly, reading whets our quest for knowledge, our imagination and evokes a spectrum of emotions, thus offering instant gratification and pleasure.

Few can deny the joy of reading the daily newspaper while enjoying a cup of tea in the mornings, an ultimate start to a great day. It's a daily ritual we would not like to miss for anything. Who doesn't get glued to the highpoint or climax of a novel.It transcends us into a surreal world, away from the harsh realities where we slip into our favorite character etched out straight from the novel and become a part of the narrative, going through the whole gamut of emotions from respect to affection, pain to joy, despair to hope, failure to success and fulfillment. It induces heightened feelings of fear, suspense and adventure raising the adrenaline rush. The sheer delight of reading a piece of poetry laden with eloquence, rhythm and soul stirring emotions makes us feel high. While reading informative articles, journals and technical books develop our intellectual capability by enriching our knowledge and enhancing our analytical skills and critical thinking, creative and descriptive pieces enhance our vocabulary, expression and creative writing skills. On the lighter note, reading satire and comic pieces tickle our ribs and relieves stress.

Reading makes us aware of our emotional self and sensitizes us to appreciate feelings of others. It enlightens our mind and soul and makes us a better human being. We must inculcate the habit of reading everyday.

Question 11

(a) *What do you mean by diagonal communication?* ***(2 Marks)***

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(b) Select the correct meaning of Idioms/Phrases given below:

(i) Pen and Ink

(1) Modern day technology

(2) Extensively

(3) Wastage

(4) In writing ***(1 Marks)***

(ii) A snake in the grass

(1) Unforeseen happening

(2) Secret or hidden enemy

(3) Unreliable person

(4) Unrecognizable danger ***(1 Marks)***

(iii) Change the sentence into Active Voice

Twenty runs were scored by him. **(1 Marks)**

(iv) Choose the word which best expresses the meaning of the given word.

Applaud

(1) Flatter

(2) Praise

(3) Pray

(4) Request ***(1 Marks)***

(c) Mr. ABC is an IT manager in Quick Software Solutions Private Limited. Write a mail on behalf of Mr. ABC to Mr. MNJ, dealer of HP Laptops seeking quotation for 100 new laptops of model HP - 610. The laptops are required for new branch of Quick Software Solutions Private Limited. ***(4 Marks)***

Answer

(a) Cross-functional communication between employees at different levels of the organizational hierarchy is described as diagonal communication. Diagonal communication is increasingly common in larger organizations. It reduces the chances of distortion or misinterpretation by encouraging direct communication between the relevant parties. For example, a junior engineer reports directly to the General Manager regarding the progress on the project.

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(b) **(i)** (4) In writing

(ii) (2) Secret or hidden enemy/ (4) Unrecognizable danger

(iii) He scored twenty runs.

(iv) (2) Praise

(c) To mnj@qwe.co.in

Subject: Quotation for 100 new HP-60 laptops

Dear Mr. MNJ

Greetings! We at Quick Software Solutions Private Limited require the aforementioned laptops for our new branch at Noida, UP. The machines must have the latest malware for virus protection and anti-glare screens. Kindly send detailed quotation including:

Warranty

Insurance

Yearly Maintenance

After sales service charges

Looking forward to an earliest response.

Regards,

ABC

IT Manager,

Quick Software Solutions

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JULY 2021

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) State with reason(s) whether the following agreements are valid or void:

(i) A clause in a contract provided that no action should be brought upon in case of breach.

(ii) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.

(iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

(iv) X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. ***(4 Marks)***

(b) Y incorporated a "One Person Company (OPC)" making his sister Z as nominee. Z is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said OPC. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below:

(i) Is it mandatory for Z to withdraw her nomination in the said OPC, if she is leaving India permanently?

(ii) Can Z continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage? ***(4 Marks)***

(c) "Risk Prima Facie passes with property." Elaborate in the context of the Sales of Goods Act, 1930. ***(4 Marks)***

Answer

(a) (i) The given agreement is void.

Reason: As per Section 28 of the Indian Contract Act, 1872, this clause is in restraint of legal proceedings because it restricts both the parties from enforcing their legal rights.

Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

(ii) The given agreement is valid.

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Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court. A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement suit may be filed in one of the courts having jurisdiction.

(iii) The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

(iv) The said agreement is valid.

Reason: 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, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

(b) (i) Yes, it is mandatory for Z to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(ii) Yes, Z can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

(c) Risk prima facie passes with property (Section 26 of the Sales of Goods Act, 1930)

According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Question 2

(a) Explain the term Contingent Contract with reference to the Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract. ***(7 Marks)***

(b) Limited Liability Partnership (LLP) gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other. Discuss. ***(5 Marks)***

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Answer

(a) **Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872):** A contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: A contracts to pay B ₹ 1,00,000 if B's house is burnt. This is a contingent contract.

Rules Relating to Enforcement: The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

(a) **Enforcement of contracts contingent on an event happening:** Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.

(b) **Enforcement of contracts contingent on an event not happening:** Where a contingent contract is made contingent on non-happening of an event, it can be enforced only when its happening becomes impossible.

(c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**

(d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

(e) **Contingent on specified event not happening within fixed time:** Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

(f) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

(b) **LLP gives the benefits of limited liability of a company and the flexibility of a partnership**

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability

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of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 3

(a) *Define Implied Authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932?* ***(6 Marks)***

(b) *X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:*

(i) *Whether L can compel only Y to pay the entire loan of ₹ 90,000?*

(ii) *Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if X, Y and Z died?*

(iii) *Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?* ***(6 Marks)***

Answer

(a) According to Section 19 of the Indian Partnership Act, 1932, subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm to arbitration;

(b) open a banking account on behalf of the firm in his own name;

(c) compromise or relinquish any claim or portion of a claim by the firm;

(d) withdraw a suit or proceedings filed on behalf of the firm;

(e) admit any liability in a suit or proceedings against the firm;

(f) acquire immovable property on behalf of the firm;

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(g) transfer immovable property belonging to the firm; and

(h) enter into partnership on behalf of the firm.

(b) (i) Yes, L can compel only Y to pay ₹ 90,000/- since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

(ii) As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise.

In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of ₹ 90,000.

(iii) According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of ₹ 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.

Question 4

(a) Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930. ***(6 Marks)***

(b) Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? ***(6 Marks)***

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Answer

(a) The right against the buyer are as follows:

1. **Suit for price (Section 55 of the Sale of Goods Act, 1930)**

   (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1)]

   (b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2)].

2. **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. **Repudiation of contract before due date (Section 60):** Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. **Suit for interest [Section 61]:** Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

   In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

(b) According to Section 29 of the Indian Partnership Act, 1932,

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

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In the light of facts of the question and provision of law:

(i) Yes, Mr. M can validly transfer his interest in the firm by way of sale.

(ii) On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) 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.

So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of ₹ 6 crore in the firm's assets.

Question 5

(a) Mr. Das, a general store owner went to purchase 200 kg of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as ₹ 150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice.

The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice.

With reference to the provisions of the Sales of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice? ***(6 Marks)***

(b) Explain the classification of the companies on the basis of control as per the Companies Act, 2013. ***(6 Marks)***

Answer

(a) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, Mr. Das on examination of the sample on which he agreed to buy, failed to notice that it contained a mix of long and short grain of rice.

In the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mr. Das will not be successful as he examined the sample of Basmati rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. It could

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have been discovered by Mr. Das, by an ordinary examination of the goods that it contained a mix of long and short grains. This reflects lack of due diligence on part of Mr. Das.

Therefore, Mr. Das, the buyer does not have any option available to him for grievance redressal.

In case Mr. Das specified his exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, then in such case, seller will be held liable.

(b) In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

(a) Holding and subsidiary companies: 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(III) the expression "company" includes anybody corporate;

(IV) "layer" in relation to a holding company means its subsidiary or subsidiaries.

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(b) Associate company [Section 2(6)]: In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(ii) the expression "joint venture'' means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

The term "Total Share Capital", means the aggregate of the -

(1) Paid-up equity share capital; and

(2) Convertible preference share capital.

Question 6

(a) Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility? ***(5 Marks)***

(b) Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. ***(4 Marks)***

(c) What is the main difference between a Guarantee Company and a Company having Share Capital? ***(3 Marks)***

Answer

(a) According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. **Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.**

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

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Effect of impossibility: The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

(b) **Mode of Settlement of partnership accounts:** As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

(i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

(c) **Difference between Guarantee Company [Section 2(21) of the Companies Act, 2013] and a Company having share capital [Section 2(22)].**

In case of guarantee company, the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; whereas in the case of company having share capital, members may be called upon to discharge their liability at any time, either during the company's life-time or during its winding up.

It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

In ***Narendra Kumar Agarwal vs. Saroj Maloo,*** the Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any three questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *The employee turnover rate in an Organisation refers to the proportion of employees who leave the Organization during a certain time period. Almost every Organisation is facing the acute problem of high employee attrition. To every Organization, high employee turnover is undesirable and can have a significant adverse impact. A high employee turnover rate results in an unfavourable effect on the morale of the remaining employees. Existing employees may face additional stress, resulting in lower productivity. In addition lower productivity of the existing employees due to a decline in morale, additional productivity is lost as existing employees must guide new incumbent how to adapt to the organizational culture and the new position.*

To address the problem, it should be compared to the average within the industry. It should not be compared across industries, as the turnover rate differs significantly in various industries. It is in the best interest of the Organization to reduce it as it is detrimental to the Organization When an employee leaves the Organization, the Organization incurs costs to find a replacement, recruitment costs, advertising costs, administration costs, background check costs, and interviewing costs. In addition, there are costs of lost productivity. when the employee is attending a training program. Second important aspect is Organizations with a high employee turnover rate may suffer from an unfavourable public image. For example, working in the call centre is seen as undesirable due to its turnover rates.

To overcome such problem, Organizations have to hire right manpower for the right position. Second important aspect is to have competitive pay structure matching with the industry. However, providing employees with a higher salary is not enough. It is important to understand the benefits that employees wants and to take that into consideration when determining an employee's pay structure. Employees need to be acknowledged and given praise when due. Another important aspect is career path; Employees want to progress in their careers. A career path should be provided to employees to give them a sense of direction and what they can attain if they stay with the Organization. Last but not the least way to offer flexibility, a flexible work schedule is highly desirable. In fact, studies have shown that a flexible work arrangement has a positive impact on employee retention. Allowing employees to choose their work time and providing a flexible work schedule gives them the ability to balance their work and personal life and, hence, improves employee satisfaction.

(i) *What do you understand by employee attrition rate?* ***(1 Mark)***

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(ii) Explain the ways to reduce high employee attrition? ***(2 Marks)***

(iii) What.is the importance of employee turnover in an Organisation? ***(1 Mark)***

(iv) How, does employee turnover rate affect brand image of an Organisation ? ***(1 Mark)***

Read the passage :

(i) Make Notes, using Headings, subheadings and abbreviations wherever necessary. ***(3 Marks)***

(ii) Write Summary by giving a suitable title. ***(2 Marks)***

Artificial intelligence (AI) is making a difference as to how legal work is done, but it isn't the threat it is made out to be. AI is making impressive progress and shaking up things all over the world today. The assumption that advancements in technology and artificial intelligence will render any profession defunct is just that, an assumption and a false one. The only purpose this assumption serves is creating mass panic and hostility towards embracing technology that is meant to make our lives easier.

Introducing AI to this profession will primarily be for the purpose of automating mundane, tedious tasks that require negligible human intelligence. The kind of artificial intelligence that is employed by industries in the current scene, when extended to the law will enable quicker services at a lower price. AI is meant to automate a number of tasks that take up precious working hours lawyers could be devoted to tasks that require discerning, empathy, and trust-qualities that cannot be replicated by even the most sophisticated form. of AI. The legal profession is one of the oldest professions in the world. Thriving over 1000 years; trust, judgment, and diligence are the pillars of this profession. The most important pillar is the relationship of trust· between a lawyer and clients, which can only be achieved through human connection and interaction.

While artificial intelligence can be useful in a number of ways in legal field like translation of documents in other languages, mining of data pertaining to cases for analyses helping decision making; scanning and. organizing documents pertaining to a case, it cannot perform higher-'level tasks such as sharp' decision making, relationship-building with valuable clients and writing legal briefs, advising clients, and appearing in court. These are over and above the realm of computerization.

Answer

(a) (i) The proportion of employees who leave the organization during a certain period is called employee attrition rate in an organization.

(ii) Various measures can be taken to prevent high attrition. Some of them are:

1. Hiring appropriately skilled people for different profiles.
2. Paying them salaries with benefits as per industry norms/benchmarked with the competitors.

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3. Acknowledging and appreciating their work.
4. Providing career growth opportunities by promoting them periodically.
5. Offering flexible timings/schedules to enable them to maintain work-life balance.

(iii) Employee turnover rate is important as it directly impacts the business of an organization by affecting the morale of the employees and their productivity. It also affects public image of the organization and can escalate the cost of hiring, in case the employee turnover is high.

(iv) Employee turnover rate affects brand image of an Organization. Today is the world of social media; anything good or bad spreads very fast. Organizations with a high employee turnover rate may suffer from an unfavourable public image. New employees would be hesitant to join such Organizations where the employee turnover rate is high.

(b) (i) Note Making

Artificial Intelligence: To aid, not replace lawyers/ Artificial Intelligence: Not a Threat

1. False Assumption
   - 1.1 will replace prof.
   - 1.2 Objective
     - 1.2.1 create panic
     - 1.2.2 prvt. tech. prlftn.
2. App. in Law
   - 2.1 Areas
     - 2.1.1 atmtg. Routine & tedious tasks with min. I.
     - 2.1.2 trltn. of docs. In other langs.
     - 2.1.3 data mining
     - 2.1.4 helping to Anlz cases for dsn. mkg.
     - 2.1.5 scng.& org. docs
   - 2.2 Benefits
     - 2.2.1 quick service at low price
     - 2.2.2 free the lawyers for tasks reqg. human connect & interaction :
       - 2.2.2.1 rlshp. bldg

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2.2.2.2 empathy & trust bldng

3. Cannot perform

3.1 sharpdsn. mkg.

3.2 rlshp. bldg. with clts

3.3 wrt. legal briefs

3.4 adv. clts

Key

AI.: Artificial Intelligence

Min.: Minimum

Prvt.: preventing

Tech.: technology

Prlftn.: proliferation

App.: application

Atmtg: automating

Trltn: translation

Docs.: documents

Langs.: languages

Anlz: analyze

Dsn decision

Mkg.: making

Scng:scanning

Org.:organizing

Reqg.: requiring

Rlshp.:relationship

Bldg.: building

Clts.: clients

Wrt.: writing

Adv.: advising

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(b) (ii) Artificial Intelligence: Not a Threat

There are many false assumptions doing the rounds pertaining to Artificial Intelligence, foremost being that it will replace professionals. The objective is to create panic and prevent proliferation of technology. AI can be applied in the legal profession for automating routine and tedious tasks requiring minimum intelligence, translation of case documents in other languages, data mining, helping to analyze cases for decision making, scanning and organizing legal and case documents. Major benefits will be that lawyers will not only be readily available at low price, but will also save their precious time that can be utilized in tasks requiring human connect and interaction such as relationship, empathy and trust building. It is clear that AI cannot perform tasks like sharp decision making, relationship building with clients, writing legal briefs and advising clients. Therefore it can never replace the lawyers.

Question 8

(a) Physical barriers are a result of our surroundings. Discuss. ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

ADHERE

(a) separate

(b) split

(c) humility

(d) fasten ***(1 Mark)***

(ii) Select a suitable antonym for the word given under :

CANDID

(a) deceptive

(b) frank

(c) sincere'

(d) subordinate ***(1 Mark)***

(iii) Change the following sentence to indirect speech :

He said to me, "It would be nice if I could see you again." ***(1 Mark)***

(c) Write a precis and give an appropriate title to the passage given below :

Naval architects-never claim that a ship is unsinkable, but the sinking of the passenger-and-car ferry Estonia in the Baltic surely should have never happened. It was well designed and carefully maintained. It carried the proper number of lifeboats. It had been thoroughly inspected on the day of the voyage. Yet, hours later, the Estonia rolled over

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and sank in the cold, stormy night. It went down so quickly that most of those on board, caught in the dark, flooding cabins had no chance to save themselves: Of those who managed to scramble overboard, only 139 survived. The rest died of hypothermia before the rescuers could pluck them from the cold sea. The final death toll amounted to 912 Souls. However, there were an unpleasant number of questions about why Estonia sank and why so many survivors were men in the prime of life, while most of the dead were woman, children and the elderly. ***(5 Marks)***

Answer

(a) Physical barriers are caused due to obstructions/factors in the immediate environment or surroundings, often leading to problems in transmission of message. These factors are noise, technical disturbances, outdated equipment, distant locations, office doors, separate areas for people, large office spaces, old technologies and lack of appropriate infrastructure.

(b) **(i)** d - fasten

(ii) a - deceptive

(iii) He said/said to me/told me that it would be nice if he could see me again.

(c) **Sinking of Estonia/ The Deadly Voyage**

The passenger-and-car ferry Estonia sank in the Baltic. Despite being well designed, carrying enough lifeboats and being duly inspected on the fateful day of the voyage, it went down quickly in the cold and stormy night. Only 139 people largely men in the prime of their life survived, while 912 people majority being women, children and the elderly died of hypothermia.

Question 9

(a) Distinguish between General English and Business English. ***(2 Marks)***

OR

(a) Focus and Attention is an important characteristic of effective communication. Explain. ***(2 Marks)***

(b) (i) Change the sentence from Active to Passive Voice.

Bring the culprit. ***(1 Mark)***

(ii) Change the sentence from Passive to Active Voice.

Three cleanliness campaigns will be launched by the authorities in the park. ***(1 Mark)***

(iii) Change the following sentence to indirect speech.

The group shouted, "Honesty is the best policy". ***(1 Mark)***

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(c) *Draft a Newspaper Report on the "Government's decision to open multiplexes after almost a year" to be published in a national newspaper.* ***(5 Marks)***

Answer

(a) The approach of **General English** leans more on the basic, conversational, day-to-day use of words that are colloquial in nature usually used in informal settings. Whereas **Business English** is specifically used in formal settings like work places or offices for business communication. It entails the usage of specific vocabulary, tonality and language constructs that are complex in nature.

OR

(a) Everyday work environment has multiple activities going on simultaneously that disturb our focus and attention. The ringing of a phone, an incoming email, or a number of tasks that require immediate attention. Apart from routine work, anxiety related to work, emotional distress etc. can also cause distractions. These are detrimental to the communication process with an individual or a group of people. Due to these distractions/disturbances, important points or subtle cues are either ignored or completely missed. In order to interpret the message correctly, being focused and attentive is important for effective communication.

(b) **(i)** Let the culprit be brought / brought in.

(ii) The authorities will launch three cleanliness campaigns in the park.

(iii) The Group shouted that honesty is the best policy.

(c) **Newspaper Report:**

Government's Decision to open multiplexes after almost a year

By *Mr. FGH, Staff Correspondent*

Monday xx,xxxx. The state government has allowed single-screen theatres and multiplexes to open at 50% occupancy provided that they follow and strictly adhere to **Covid Safety protocols.** After almost a year of dry run, the cinema theatres get ready for bustling activity in and around the premises. Cinema Operators who have been out of business for a year, welcomed the decision. Even small businesses in the vicinity heaved a sigh of relief.

Mr. XYZ, President of the Cinema Operators and Exhibitors Association, congratulated the government. He further remarked, "We have suffered huge losses due to lack of business, we were eagerly awaiting the decision." He assured that all the safety protocols with regard to Covid would be strictly followed. Discussing about the preparedness of theatres he informed, "We have already directed the cinema owners to get their staff vaccinated and most of them already have their staff inoculated at least with the first dose. Theatres, canteen facility and public conveniences will be fumigated

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between shows. Thermal screening and sanitizing to be available at all entry and exit gates."

The cinema owners/operators are optimistic about part recovery of their losses banking on big film releases lined up in the next two months. Avid cinema buffs are equally excited to see their favourite stars on the big screen after a long hiatus. They are also seeking relaxation in night curfew so that late night shows can be allowed. The popular multiplex chain in the city ABC has even offered 5-10 % discount for the audience who have been inoculated with both the doses. However, with the third wave of Covid-19 still looming, how long will the euphoria last, time will only tell.

Source: State Government Official Gazette

Question 10

(a) *Write essentials of oral communication.* ***(2 Marks)***

(b) (i) *Change the sentence from Active to Passive Voice.*

Did they like paintings in the exhibition ? ***(1 Mark)***

(ii) *Change the sentence from Passive to Active Voice.*

Food from roadside vendor should not be eaten during Covid pandemic as a safety precaution. ***(1 Mark)***

(iii) *Change the following sentence to indirect speech.*

Mr. X to the Cashier: "Do you have change for five hundred rupees?" ***(1 Mark)***

(c) *Write an article of about 250 words on the topic 'Covid' Certificate must for attending. Parliamentary session.* ***(5 Marks)***

Answer

(a) Essentials of oral communication are:

(a) **Pronunciation** when wrong or unclear can lead to lack of clarity and miscommunication.

(b) **Listening & conversation**: The tonality, accent and diction convey the emotion, urgency and seriousness of the communication.

(c) **Spoken grammar:** Using the grammar correctly while speaking helps in correct interpretation of the message.

(d) **Vocabulary:** Colloquial words should be used; difficult words should be avoided unless the listener is proficient in the language.

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(b) (i) Were the paintings in the exhibition liked by them?

(ii) As a safety precaution during Covid pandemic, we should not eat food from roadside vendor. / We should not eat food from the roadside vendor as a safety precaution during Covid pandemic.

(iii) Mr. X asked the cashier whether / if he had (the) change for five hundred rupees.

(c) Covid Negative Certificate must for attending Parliamentary Session

By Mr./Ms. BNM

Covid -19 has adversely affected institutions, industries and businesses across the board from schools to colleges/universities, from recreation to travel and hospitality, from manufacturing to services. The business of the parliament is no exception. It is all the more important rather critical to keep the Parliament running as issues of paramount significance ranging from economy to public welfare to national security are discussed, debated and decided. Moreover, each day of the Parliament costs the exchequer a huge amount.

In order to prevent the disruption of Parliamentary sessions, certain safety protocols have been stipulated keeping in mind the health condition of the Members, Visitors and the Press covering the sessions.

All Members/attendees will need to have a **COVID-19 negative certificate vide notification xx/xx/xxxx** to enter the premises in the current and subsequent sessions till further change in notification. The test needs to be done 72 hours before the commencement of the session. Those Members/attendees who have been unable to undertake the test will be required to do so on the day they arrive at the Parliament's reception. They will be allowed to enter only if their **Rapid antigen test** comes out negative. In case staff or family of a member tests positive, the member will have to self-quarantine for 14 days. The members will have to wear masks at all times, even during discussions/debates and maintain social distancing. Members/attendees should avoid going out of the Parliament during the course of a day's proceedings unless necessary. Parliamentary papers will be circulated digitally; hard copies have been discontinued. Members have been requested to avoid calling visitors unless necessary. The Parliament canteen would offer only packed meals, tea and coffee during the course of the session.

(Source.....)

Question 11

(a) Define the term communication. When the communication is supposed to be effective ?

(2 Marks)

(b) Select the correct meaning of Idioms/Phrases/words given below:

(i) Storm in a tea cup

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(a) *Crave for something*

(b) *Something fishy*

(c) *Make a big issue out of a small thing*

(d) *Get into quarrels* **(1 Mark)**

(ii) *Core Competency*

(a) *Decision taken by a competent authority*

(b) *Head of a department or a company authorised to take decision*

(c) *Basic strength of a group or company*

(d) *Minimum skill/professional qualification·* **(1 Marks)**

(iii) *Change the sentence into Active Voice.*

Who were not liked by you at the party ? **(1 Mark)**

(iv) *Choose the word which best expresses the meaning of the given word.*

FIASCO

(a) *Shock*

(b) *Win*

(c) *Leaming*

(d) *Failure* **(1 Mark)**

(c) *Write a letter to your landlord requesting him to reduce rent in the light of 'Covid 19' pandemic.* **(4 Marks)**

Answer

(a) **Communication** is a process of exchanging information, ideas, thoughts, feelings and emotions through speech, signal, writing, or behaviour. In communication process, a sender (encoder) encodes a message and then using a medium/channel sends it to the receiver (decoder) who decodes the message and after processing information sends back appropriate feedback/reply using a medium/channel.

The communication is supposed to be complete or effective only when the listener responds relevantly and appropriately.

(b) **(i)** c / Make a big issue out of a small thing.

(ii) c / Basic strength of a group or company.

(iii) Whom/who did you not like at the party?

(iv) d / Failure

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(c) Letter

From:

XYZ

Vasant Vihar Enclave

Gurugram, Harayana-xxxxxx Dated: 30.06.2021

To

Mr. ABC

House No. 21/3,

Ram Nagar Colony,

New Delhi xxxxxx

Dear Mr. ABC / Dear Sir,

Subject: Request to reduce the monthly rent amount.

Greetings! As you know that I have been living in the rented apartment premises owned by you for the last 5 years. In all these years, I have paid for the yearly maintenance of the apartment and always paid the rent on time.

Due to unprecedented circumstances owing to Covid-19 pandemic, the factory where I worked was shut down leaving me jobless. I am already neck deep in a financial mess. Though I am looking for a job and am hopeful of getting one very soon, I request you to reduce the monthly rent amount by half for the next 3 months and support me to get over the present situation.

I assure you that I shall pay the amount as per contract after 3 months. I shall look forward to a positive response.

Thanks and Regards,

Yours Faithfully / Sincerely,

XYZ

Tenant

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DEC 2021

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *A, B, C and D are the four partners in a firm. They jointly promised to pay ₹ 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ₹ 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.* ***(4 Marks)***

(b) *AK Private Limited has borrowed ₹ 36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is ₹ 30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.* ***(4 Marks)***

(c) *"A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930.* ***(4 Marks)***

Answer

(a) Joint promisors (Section 42 of the Indian Contract Act, 1872)

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43)

As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case, A, B, C and D have jointly promised to pay ₹ 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only ₹ 50,000. A is compelled to pay the whole amount to F.

Hence, A is entitled to receive ₹ 50,000 from C and ₹ 2,75,000 from D, as worked out below:

From C ₹ 50,000= (C's Liability ₹ 1,50,000 Less: Amount he could not pay ₹ 1,00,000).

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From D ₹ 2,75,000= (D's Liability ₹1,50,000+1/2 of liability of B (Loss) (1,50,000*1/2) i.e. ₹ 75,000+1/2 of C's liability (Loss) (1,00,000*1/2) i.e., ₹ 50,000) In other words, equal proportion i.e., ₹ 5,50,000 (i.e.₹6,00,000-₹50,000) / 2.

Thus, total amount A can receive from C and D comes to ₹3,25,000 (50,000+2,75,000)

(b) 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 crores from BK Finance Limited which is beyond its borrowing power of ₹ 30 crores.

Hence, contract for borrowing of ₹ 36 crores, being ultra vires the memorandum of association and thereby ultra vires the company, 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.

(c) Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

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(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 2

(a) Explain any five circumstances under which contracts need not be performed with the consent of both the parties. ***(7 Marks)***

(b) 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. ***(5 Marks)***

Answer

(a) 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 recission. 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)

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(b) Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

(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 punishable with fine which shall not be less than ₹ 2000, but which may extend to ₹ 25000.

Question 3

(a) Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

(3 + 3 = 6 Marks)

(b) Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

(i) X aged 16 years borrowed a loan of ₹ 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.

(ii) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J. ***(6 Marks)***

Answer

(a) (i) Definition of Partnership: 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement

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3. Business
4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

(ii) ELEMENTS OF PARTNERSHIP

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

   The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

2. **Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. **Business:** In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. **Agreement to share profits:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.

5. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting

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for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

(b) (i) According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

According to Section 68 of the Act, a claim for necessaries supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessaries supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

(ii) As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.

Question 4

(a) Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.

(6 Marks)

(b) State whether the following are partnerships:

(i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.

(ii) Two firms each having 12 partners combine by an agreement into one firm.

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(iii) A and B, co-owners, agree to conduct the business in common for profit.

(iv) Some individuals form an association to which each individual contributes ₹ 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.

(v) A and B, co-owners share between themselves the rent derived from a piece of land.

(vi) A and B buy commodity X and agree to sell t e commodity with sharing the profits equally. ***(6 Marks)***

Answer

(a) The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Sr. No.	Basis of difference	Sale	Hire-Purchase
1	Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
2	Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
3	Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4	Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
5	Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
6	Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

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(b) (i) No, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such persons partners.

Alternatively, this part can also be answered as below:

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

(ii) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.

(iii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

(iv) No, this is not a case of partnership as no charitable association can be floated in partnership.

(v) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.

(vi) Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Question 5

(a) (i) TK ordered timber of 1 inch thickness for being made into drums. The seller agreed *to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber.*

(3 Marks)

(ii) AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. ***(3 Marks)***

(b) What do you mean by the term Capital? Describe its classification in the domain of Company Law. ***(1 + 5 = 6 Marks)***

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Answer

(a) (i) Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:

The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

(a) The buyer should have made known to the seller the particular purpose for which goods are required.

(b) The buyer should rely on the skill and judgement of the seller.

(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

According to Section 15 of the Sale of Goods Act, 1930 where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.

(ii) Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods.

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When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

In the instant case, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

(b) (i) **Meaning of capital:** The term capital has variety of meanings. But in relation to a company limited by shares, the term 'capital' means 'share capital'. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

(ii) **Classification of capital:** In the domain of Company Law, the term capital can be classified as follows:

(a) **Nominal or authorised or registered capital:**

This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.

(b) **Issued capital:** It means such capital as the company issues from time to time for subscription.

(c) **Subscribed capital:** As such part of the capital which is for the time being subscribed by the members of a company.

(d) **Called up capital:** As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.

(e) **Paid-up capital:** It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

Question 6

(a) *What is meant by 'Quasi-Contract'? State any three salient features of a quasi-contract as per the Indian Contract Act, 1872.* ***(5 Marks)***

(b) *"Sharing in the profits is not conclusive evidence in the creation of partnership". Comment.* ***(4 Marks)***

(c) BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 *shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?* ***(3 Marks)***

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Answer

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

The salient features of Quasi-contract:

1. It does not arise from any agreement of the parties concerned but it is imposed by law.
2. The right under it is always a right to money and generally though not always to a liquidated sum of money.
3. It is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

(b) **"Sharing in the profits is not conclusive evidence in the creation of partnership"**

Sharing of profit is an essential element to constitute a partnership. But it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Where there is an express agreement between partners to share the profit of a business and the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.

According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.

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Hence, the statement is true / correct that mere sharing in the profits is not conclusive evidence.

(c) Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) "layer" in relation to a holding company means its subsidiary or subsidiaries.

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any three questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *Read the passage given below and answer the questions that follows:*

Academics has always been an essential part of human development. It prepares us to survive in the outside world and establish an identity of our own. In India, from an early age, we have been taught that education is limited to the boundaries of academics only; the idea of getting out into the field, for gaining practical experience, is always considered a hoax. This has hindered students' development. But, the truth is that education represents a considerably broader field than we know of it. Our teaching, from the basics, has been focused on getting good grades and job offers, rather than being creative and unique.

In the 21st century, the pure academic type of education is slowly paving way for a whole new type. The paradigm shift in the whole education system is evident. People have now come to understand that education is a 360 degree activity that should focus on students' overall development, rather than restricting him/her to the classroom. Cc-curricular activities that take place outside the classroom but reinforce or supplement classroom curriculum, in some ways, have become a point of focus today. Participating in such activities helps youngsters grow mentally, socially and individually. Intellectual development of a student is developed in the classroom, but for the aesthetic development such as team-building, character building, and physical growth, students must step out into the outside world.

Similarly, in colleges and institutions, there is a need for practical exposure so that the students can experience the actual working of an industry: Catering to this change, most professional colleges including B schools have started providing practical exposure to students through regular guest lectures, industrial visits, conferences, seminars, cultural festivals, and so on. With industry visits, students are able to better identify their prospective areas of work in the overall organizational function.

Through such events, students are made to participate and coordinate different events wherein, they get to know how exactly things are managed. Co-curricular or extra-curricular activities provide practical exposure and opportunities to implement what students learn in the classroom. This helps in developing the overall personality of the

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students, inculcating various soft-skills in them, which otherwise are difficult to teach. Clearly, life beyond academics creates creative and empowered professionals.

(i) What has not been the focus of education from earlier times? ***(1 Mark)***

(ii) Where should students go for aesthetic development? ***(1 Mark)***

(iii) What kind of co-curricular activities have become points of focus today? ***(1 Mark)***

(iv) What will give children a better insight into industry? ***(1 Mark)***

(v) Why are soft skills difficult to teach in the classroom? ***(1 Mark)***

(b) Read the Passage:

(i) Make notes, using headings, sub-headings and abbreviation wherever necessary giving a suitable title. ***(3 Marks)***

(ii) Write a summary. ***(2 Marks)***

Keeping cities clean, free of any kind of pollution, is essential for keeping their residents healthy. Our health depends not just on personal hygiene and nutrition, but critically also on how clean we keep our cities and their surroundings. The spread of dengue, chikungunya and corona virus are intimately linked to the deteriorating state of public health conditions in our cities as well.

The waste management to keep cities clean is now getting attention through the Swachh Bharat Mission. People are now more aware of the importance of cleanliness and necessary safety precautions to be observed on day to day basis.

However, much of the attention begins and stops with the brooms and the dustbins, extending at most to the collection and transportation of the mixed waste to some distant or not so distant place, preferably out of sight. The challenge of processing and treating the different streams of solid waste, and safe disposal of the residuals in scientific landfills, has received much less attention in municipal solid waste management than is expected from a health point of view. One of the problems is that instead of focusing on waste management for health, we have got sidetracked into "waste for energy". If only we were to begin by not mixing the biodegradable component of solid waste (close to 60 percent of the total) in our cities with the dry waste, and instead use this stream of waste for composting and producing a gas called methane.

Answer

(a) (i) From earlier times, the focus has not been on getting out into the field for gaining hands on experience thus curbing the creativity, innovation and uniqueness of young professionals. In short, being creative and unique has not been the focus of

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education from earlier times.

(ii) Students must / should step out into the outside world for aesthetic development.

(iii) In present times, co-curricular activities taking place outside the classroom that reinforce or supplement classroom curriculum are becoming the focal point.

(iv) Students gain valuable exposure into their prospective areas of work in industry through industry visits. They acquire essential people skills through regular guest lectures, conferences, seminars and cultural festivals.

(v) Soft-skills cannot be taught in the classroom as they require students to confront case scenarios/studies that give them the opportunity to implement concepts learnt in classrooms to real life issues/challenges and deal with them effectively. Thus, Soft skills are developed only through practical exposure and opportunities to implement what they have learnt in classroom.

(b) (i) Note Making

Title: Pollution & Public Health / Waste Management

1. Pb. Hlth. depends upon
   - 1.1 Per. Hygn
   - 1.2 Ntrtn
   - 1.3 Clnlns of cities
2. Poor Pb. Hlth causes
   - 2.1 Dengue
   - 2.2 Chikangunya
   - 2.3 Corona
3. Swacch Bharat Mission is
   - 3.1 adrsg. waste mgmt.
   - 3.2 gnrtng. awrns. about
     - 3.2.3 clnlns.
     - 3.2.4 safety prctns.
   - 3.3 ltd. to
     - 3.3.1 placing dustbins
     - 3.3.2 cln. & trnsptn. Of waste
4. Waste mgmt..
   - 4.1 challenges

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4.1.1 prcng. & trtng. Solid waste

4.1.2 safe disposal of residuals

4.2 Focus

4.2.1 is waste for energy

4.2.2 should be for hlth.

5. Plausible Solution

5.1 seg. Bio-deg. Waste for

5.1.1 composting

5.1.2 producing methane

Key to Abbreviations

1. Pb.: public
2. Hlth.: health
3. &: and
4. Per.: personal
5. Hyg.: hygiene
6. Ntrtn.: nutrition
7. Clnlns.: cleanliness
8. Adrsg.: addressing
9. Mgmt.: management
10. gnrtng.: generating
11. awrns.: awareness
12. prctns.: precautions
13. cln.: collection
14. trnsptn.: trAnswerportation
15. prcng. : processing
16. trtng.: treating
17. seg.:segregating
18. deg.: degradable

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(ii) Summary

Public health largely depends upon personal hygiene, nutrition and cleanliness around cities. Poor public health causes widely transmissible diseases such as dengue, chikangunya and corona. Swacch Bharat Mission is not only addressing the issue of waste management but also spreading awareness about cleanliness and safety precautions related to the issue but it is limited to placing dustbins and collection as well as transportation of waste. Its focus is waste for energy rather than health. Possible solution entails segregating bio-degradable waste to produce compost and methane.

Question 8

(a) Completeness is an important characteristic of effective communication. Comment.

(2 Marks)

(b) (i) Choose the word that best expresses the meaning of the given word:

Sloppy

(1) Drunk

(2) Careless

(3) Tired

(4) Untrustworthy ***(1 Mark)***

(ii) Select a suitable antonym for the given word:

Fallacy

(1) Truth

(2) Liberal

(3) Tolerant

(4) Persist ***(1 Mark)***

(iii) Change the following sentence to indirect: speech:

Alex said, "I am working day and night". ***(1 Mark)***

(c) Write precis and give appropriate title to the passage given below:

The most alarming of man's assaults upon the environment is the contamination of air, earth, rivers and sea with lethal materials. This pollution is for the most part irrevocable; the chain of evil it initiates is for the most part irreversible. In this contamination of the environment, chemicals are the sinister partners of radiation in changing the very nature of the world; radiation released through nuclear explosions into the air, comes to the earth in rain, lodges into the soil, enters-the grass or wheat grown there and reaches the bones of a human being, there to remain until his death. Similarly, chemicals sprayed on

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crops lie long in soil, entering living organisms, passing from one to another in a chain of poisoning and death. Or they pass by underground streams until they emerge and combine into new forms that kill vegetation, sicken cattle, and harm those who drink from once pure wells.

It took hundreds of millions of years to produce the life that now inhabits the earth and reached a state of adjustment and balance with its surroundings. The environment contained elements that were hostile as well as supporting. Even within the light of the sun, there were short-wave radiations with power to injure. Given time, life has adjusted and a balance reached. For time is the essential ingredient, but in the modern world there is no time.

The rapidity of change and the speed with which new situations are created follow the heedless pace of man rather than the deliberate pace of nature. Radiation is no longer the bombardment of cosmic rays: it is now the unnatural creation of man's tampering with the atom. The chemicals to which life is asked to make adjustments are no longer merely calcium and silica and copper and all the rest of the minerals washed out of the rocks and carried in the rivers to the sea; they are the synthetic creations of man's inventive mind, brewed in his laboratories, and having no counterparts in nature. ***(5 Marks)***

Answer

(a) A complete communication conveys all the facts and information necessary and sufficient about the subject required by the recipient. It keeps in mind the receiver's intellect and attitude and conveys the message accordingly. Lack of relevant information leads to ambiguity, leaving room for assumptions and defeating the principal objective of the intended communication. Hence, completeness is an important characteristic of effective communication.

(b) **(i)** (2) / Careless

(ii) (1) / Truth

(iii) Alex said that he / she had been working day and night.

(c) Précis

Title: Mankind: The destroyer of nature's balance/legacy / Chemicals: Boon or Bane for environment / Chemicals: Threat to Mankind

Mankind has polluted air, water and earth with life threatening materials. The irreversible damage caused to the environment is due to chemicals that find their way into the soil and vegetation through acid rain led by nuclear explosions. Chemicals sprayed on crops seep through into the underground water streams and wells, causing deadly diseases in cattle and humans alike. As humans we must realize that the evolution of life in its current form that is in perfect sync with nature took millions of years. Man is destroying

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this natural balance at a frantic pace by polluting nature with radiations and toxic synthetic materials that are non-biodegradable.

Question 9

(a) *What is the informal communication?* ***(2 Marks)***

OR

State the common networks used in organisations. ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word:*

Defray

(1) *Sudden*

(2) *Rash*

(3) *Disclaim*

(4) *Spend* ***(1 Mark)***

(ii) *Choose the word which best expresses the meaning of the given word:*

Immaculate

(1) *Spotless*

(2) *Tarnished*

(3) *Defiled*

(4) *Pleasing* ***(1 Mark)***

(iii) *Change the following sentence to indirect speech:*

He said to her, "Are you coming to the party? ***(1 Mark)***

(c) *You are a student of Mother's Global Institute. Your institute celebrated the annual day on 30th November 2021. Draft a report on annual day celebration to be included in your institute's annual magazine.* ***(5 Marks)***

Answer

(a) Informal Communication is casual, friendly and unofficial. It can be between family, friends, neighbours, members of the community and people working together in an organization. It is spontaneous conversation and exchange of information between two or more persons without conforming to the prescribed official rules, processes, systems, formalities and chain of command.

OR

The most common networks followed in organisations are the following:

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(i) **Vertical network:** The vertical network is a formal network. It is usually between a higher ranking employee and a subordinate. In this two-way communication, immediate feedback is possible.

(ii) **Circuit network:** When two persons communicate with each other sending messages and feedback, they form a communication circuit. Therefore it is known as circuit network.

(iii) **Chain network:** The communication pattern that follows the chain of command from the senior to the junior is called the chain network.

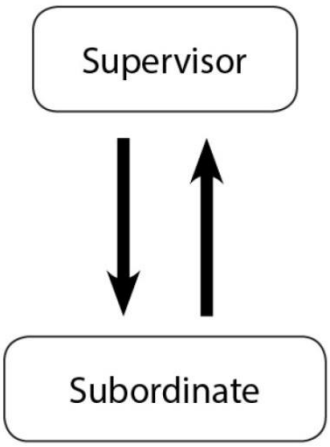
(iv) **Wheel and spoke network:** This is an organization where there is a single controlling authority who gives instructions and orders to all employees working under him/her and getting back the report from them.

(v) **Star network:** The star communication network has multiple channels of communication open between all members. This network propagates group communication and is essential where teamwork is involved.

The usefulness of all networks depends on the structure and size of the company, and the manner of communication between the employees.

The above said network may be explained by diagram as below:

1. **Vertical Network:**



Vertical Network

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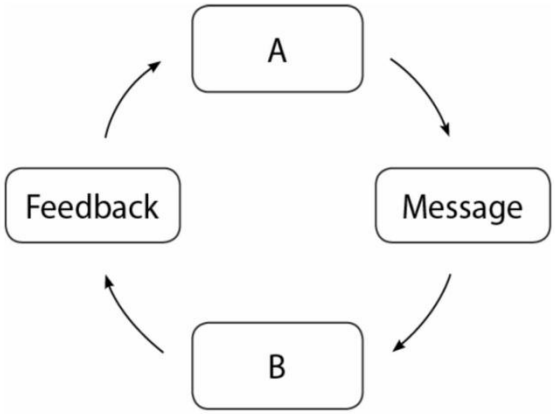
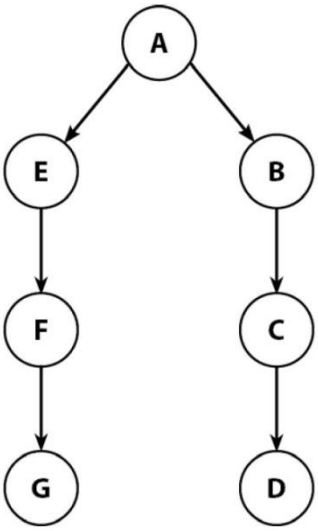
2. Circuit Network:



Circuit Network

3. Chain Network:



Chain of Command

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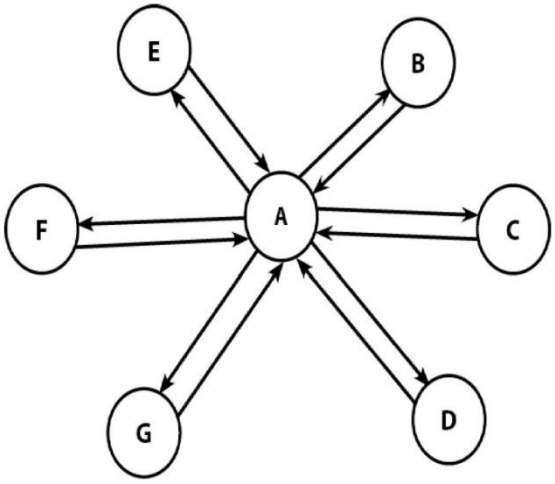
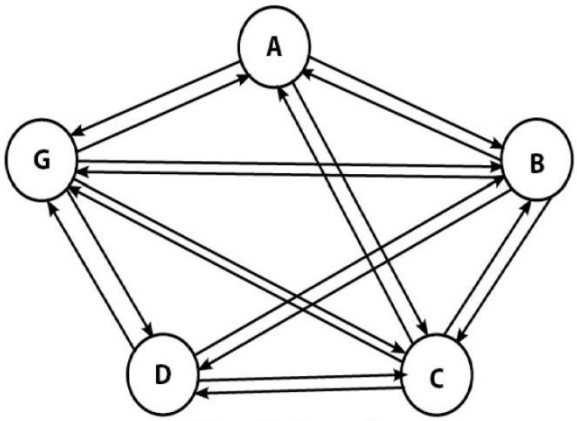
4. Wheel & Spoke Network:



Wheel and Spoke Network

5. Star Network:



Star Network

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(b) **(i)** (4) / Spend

(ii) (1) / Spotless

(iii) He asked / enquired of her if / whether she was coming to the party.

(c) **Report**

Annual Day Celebrations: A gala event / Annual Day Celebrations

Our beloved alma mater / Mother's Global Institute celebrated its 20th Annual Day on November 30, 2021 at the school auditorium with great fanfare. As many as 1000 guests comprising students, parents and alumni attended the event. The programme commenced at 10 AM with the Chief Guest, Municipal Councill or Sh. XYZ lighting the ceremonial lamp with Director, Dr. ABC, in presence of senior staff members followed by Saraswati Vandana rendered by the middle school choir. The Chief Guest addressed the large audience, motivating the students to concentrate on holistic personality development. He congratulated the school teaching staff, students and authorities for delivering excellent results in the grade X and XII consecutively for 3 years despite the sudden onslaught of the pandemic.

It was then time for a cultural extravaganza based on the theme 'Unity in Diversity'. The junior school students (grade II to IV)) highlighted their dancing skills, captivating the audience with a dance parody based on folk dances of India from Bhangra to Bihu and Ghoomer to Garba. The stage came alive with their colourful costumes and vibrant moves. The middle school choir enthralled the audience with soulful renditions of the popular patriotic numbers 'Jai Ho' and 'Suno Gaur se duniya walon' and 'India Wale'. Audience was swaying to the foot-tapping music and gave a thunderous applause amid encore requests. A thematic play was presented by the senior school students of grade XI and XII that showcased the cultural and civilizational ethos of our nation.

The chief guest then gave away prizes to the meritorious students, winners of the Painting & Debate Competition held on 'Bal Diwas' on November 14, 2021 and House Captain of the 'Ganges' House for winning maximum medals at the recently held sports meet. The programme ended with The Principal Dr. Mrs. BNM delivering vote of thanks to the Chief Guest. The guests were ushered to the school grounds where Winter Carnival was organized and refreshments were served. It was a fun day well spent amid entertainment galore, giggles and laughter.

Question 10

(a) *Write about the cultural barriers in communication.* ***(2 Marks)***

(b) *(i)* *Change the sentence from active to passive voice.*

By this time tomorrow we will have signed the deal. ***(1 Mark)***

(ii) *Change the sentence from passive to active voice.*

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The minister was welcomed by the people. ***(1 Mark)***

(iii) Change the following sentence to indirect speech:

She said to me, "Do you know this man?" ***(1 Mark)***

(c) (i) As a Finance head of Zeeta Private Limited, draft a circular to be distributed to all employees of finance department informing them to attend a meeting to finalise financial statements for the quarter ending 30th September 2021. ***(3 Marks)***

(ii) Write a formal email to the Reporting Manager (E-mail: RM@kkpvt.com) as the Assistant Manager (E-mail: AM@kkpvt.com) of KK Private Limited to request for leave of one week for personal work. ***(2 Marks)***

Answer

(a) Cultural barriers refer to having knowledge of different cultures in order to communicate effectively with cross culture people. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences between people from various countries, regions tribes and religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications.

(b) (i) By this time tomorrow the deal will have been signed. / By this time tomorrow the deal will have been signed by us / The deal will have been signed by this time tomorrow.

(ii) The people welcomed the minister.

(iii) She asked me if / whether I knew that man.

(c) (i) Meeting:

Zeeta Private Limited

Circular No. XXI December 15, 2021

Meeting : Finance Department

As per past practice, the meeting to finalize financial statements for the last quarter ending September 30, 2021 is being held as per the under mentioned schedule. All employees of the department are directed to attend the same mandatorily.

All are requested to note the details and make themselves available without fail. No leave shall be granted/approved except under emergent circumstances.

Defaulters will be liable for explanation and strict action will be taken against them.

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Schedule:

Date: Dec XX, 2021

Time: 9:30 AM

Venue: Conference Hall, 2nd Floor

PQR

Head, Finance

(ii) Mail:

From:AM@kkpvt.com

To: RM@kkpvt.com

Subject: Request for Leave (One week)

Dear Sir,

Greetings! This is to inform to your good self that I have few urgent tasks to be completed in the coming week. Owing to the same I shall not be able to attend office for a week. However, I shall be available over telephone, if required.

I request you to grant me leave for a week starting from December 20 till 24, 20XX. I shall join office w. e. f December 27, 20XX positively.

Looking forward to your kind approval.

Best Regards,

RST

Assistant Manager,

KK Private Limited,

C-9 Sector-3,

DD Nagar, New Delhi-1100XX

Question 11

(a) Explain horizontal communication. ***(2 Marks)***

(b) Select the correct moaning of Idiom/Phrases given below:

(i) Notch up

(1) To win or create a record.

(2) To look disappointed.

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(3) To get annoyed.

(4) To be agitated. ***(1 Mark)***

(ii) To play second fiddle

(1) To be happy, cheerful and healthy

(2) To reduce importance of one's senior

(3) To support the role and view of another person

(4) To do back seat driving ***(1 Mark)***

(iii) Change the sentence into passive voice:

Mohan will tell you later. ***(1 Mark)***

(iv) Choose the word which best expresses the meaning of the given word:

Novice

(1) Beginner

(2) Concrete

(3) Reality

(4) Veteran ***(1 Mark)***

(c) You are Vishnu Shreshth, 16 KY Nagar, Delhi. You wish to apply for the post of the Marketing Manager in a reputed firm in Mumbai. Write a letter on 1st December 2021 to the Public Relations Officer, ZZ Enterprises, Mumbai, applying for the job. Write the letter including your bio-data.* ***(4 Marks)***

Answer

(a) Horizontal communication involves communication between two entities of an organization at the same level. For example, the managers of a project in a company may hold a regular daily, weekly or monthly meeting to discuss the progress of the project.

(b) **(i)** (1) / To win or create a record

(ii) (3) / To support the role and view of another person / None.

(iii) You will be told by Mohan later. / You will be told later by Mohan.

(iv) (1) / Beginner

** reputable to be read as reputed in the Question Paper.*

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(c) Cover Letter

Vishnu Shreshth

16, KY Nagar

Delhi

e-mail: vish_shreshth @ymail.com

December 01, 2021

Public Relations Officer

ZZ Enterprises,

339, Coral Street

Mumbai

Sir / Madam,

SUBJECT: Application for the post of Marketing Manager

This is with reference to your advertisement in 'The Times of India' dated November 15, 2021 for the post of Marketing Manager. I wish to apply for the same. I am confident that my extensive experience, dynamism and teamwork skills make me a strong candidate for the said profile.

My zest for learning, ability to confront and overcome challenges, positivity and clear communication skills have helped strengthen our team's efficiency and sense of community.

I look forward to the opportunity to present myself in person for an interview/discussion. Thank you so much for your time and consideration.

Yours Sincerely,

Signature

(Vishnu Shreshth)

Encl.:
1. Photograph
2. Testimonials & Certificates.
3. Resume / Biodata

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Resume / Bio-data

Vishnu Shreshth

16, KY Nagar, Delhi

Tel: 954XXXXXXX / email: vish_shreshth @ymail.com

Career Objective

Seeking to work for a progressive organisation as a Marketing Manager which will provide opportunities to utililize my skills & abilities.

Education

Marketing Management, Master of Business Administration, Completed, June 2016

ABC College

BBA/MBA

Delhi

Work Experience

May 2016 - present

Marketing Manager

XYZ Ltd

Delhi,

Job Responsibilities

- Develop and Evaluate marketing strategy, based on market characteristics, cost to achieve customer satisfaction.
- Formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers
- Direct the hiring, training, and performance evaluations of marketing and sales staff and oversee their daily activities
- Negotiate contracts with vendors and distributors to manage product distribution, establishing distribution networks and developing distribution strategies

Competency Areas:

- Strategy, Execution & Leadership
- Market Analysis/ Research/ Roadmap

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- Vendor Coordination/ Management
- Work Force Supervision
- Marketing Campaign Development
- Target Achievement
- Training
- Team Building

Computer Proficiency

- MS Office – Word, Excel and PowerPoint
- Internet Applications

Languages

English, Hindi, Marathi

References

Available upon request

Declaration

I solemnly declare that all the above information is correct to the best of my knowledge and belief.

Date: Signature

Place: (Vishnu Shreshth)

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MAY 2022

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) 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 ₹ 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? ***(4 Marks)***

(b) The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed ₹ 18 Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan.

Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013? ***(4 Marks)***

(c) What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. ***(4 Marks)***

Answer

(a) Section 39 provides that 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 had signified, by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

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.

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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).

(b) 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.

In the given question, Quick Finance Limited being external to the company, need not enquire whether the necessary resolution was passed properly. Even if Aarna Limited claims that no resolution authorizing the loan was passed, Aarna Limited is bound to repay the loan to Quick Finance Limited.

(c) (i) **Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

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(ii) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** 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 or becomes void.

Question 2

(a) *"The general rule is that an agreement made without consideration is void." State the exceptions of this general rule as per the Indian Contract Act, 1872.* ***(7 Marks)***

(b) *Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008.* ***(5 Marks)***

Answer

(a) An agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872): In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

Exceptions:

1. **Natural Love and Affection:** Conditions to be fulfilled under section 25(1)

   (i) It must be made out of natural love and affection between the parties.

   (ii) Parties must stand in near relationship to each other.

   (iii) It must be in writing.

   (iv) It must also be registered under the law.

   A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

   (i) The services should have been rendered voluntarily.

   (ii) The services must have been rendered for the promisor.

   (iii) The promisor must be in existence at the time when services were rendered.

   (iv) The promisor must have intended to compensate the promisee.

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3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

6. **Bailment:** No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment.

7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. ***(Kadarnath v. Gorie Mohammad)***

(b) Incorporation by registration (Section 12 of LLP Act, 2008):

(1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of 14 days—

(a) register the incorporation document; and

(b) give a certificate that the LLP is incorporated by the name specified therein.

(2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.

(3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

(4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate Limited Liability Partnership (LLP)

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

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(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. At least 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.

Question 3

(a) (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932? ***(2 Marks)***

(ii) Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm. ***(4 Marks)***

(b) Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting ₹60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. 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 Srishti 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 adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?

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(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?

(iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? ***(6 Marks)***

Answer

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

(ii) Minor as a partner: A minor is not competent to contract. Hence, a person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights of a minor in a partnership firm:

(i) A minor partner has a right to his agreed share of the profits and of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(b) A contract made with or by a minor is void ab-initio: Pursuant to Section 11, 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. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, 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 necessaries. The parents will be held liable only when the child is acting as an agent for parents.

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

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(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. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

Question 4

(a) *What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act?* ***(6 Marks)***

(b) *M/s ABC Associates is a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Prateek, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Prateek join them as partner in M/s ABC Associates. After some time, Mr. Prateek felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Prateek, be introduced as a partner if his father wants to get a retirement? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.* ***(6 Marks)***

Answer

(a) (i) **Sale by sample [Section 17 of the Sale of Goods Act, 1930]:** In a contract of sale by sample, there is an implied condition that

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

(c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

(ii) **The following are the implied warranties operative under the Act:**

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.

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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 or attached by the usage of trade.

   Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

(b) (i) **Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932):** Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

In the instant case, Mr. Prateek can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.

(ii) **Rights of Transferee of a Partner's interest (Section 29):** A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Hence, here Mr. Prateek, the transferee in M/S ABC Associates cannot inspect the books of the firm and contention of the other partners is right that Mr. Prateek cannot challenge the books of accounts.

Question 5

(a) *Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to*

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come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

(i) State with reasons whether Sonal can recover the amount from the Jeweller.

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? ***(6 Marks)***

(b) Explain the 'Doctrine of ultra vires under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company? ***(6 Marks)***

Answer

(a) 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.

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

(ii) If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even though he has to bear some expenses for repair; he cannot charge it from Sonal.

(b) Doctrine of ultra vires:

The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further *[Ashbury Railway Company Ltd. vs. Riche].* In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the

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company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

Consequences of 'ultra vires' acts of 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 one enters into a transaction which is ultra vires the company, he/she cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.

However, some ultra vires act can be regularised by ratifying them subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholders can validate such acts.

Question 6

(a) *"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 Indian Contract Act, 1872.* ***(5 Marks)***

(b) *Explain the grounds on which court may dissolve a partnership firm in case of any partner files a suit for the same.* ***(4 Marks)***

(c) *Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013.* ***(3 Marks)***

Answer

(a) **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.

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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. The 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 is 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.

(b) According to Section 44 of the Indian Partnership Act, 1932, Court may, at the suit of the partner, dissolve a firm on any of the following grounds:

(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.

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(d) **Persistent breach of agreement:** Following comes into 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 due by the partner, 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.

(c) As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) –

- Shall be eligible to incorporate an OPC
- Shall be a nominee for the sole member.

In the given case, Mr. R is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Hence, Mr. R is eligible to incorporate an OPC.

Also, even though Mr. S's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Hence, S's name cannot be given as nominee in the memorandum.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any **three** questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *Read the passage given below and answer the questions that follows:*

Electricity is the life force of modern world. The use of electricity in daily life at all levels is far too elaborate to be measured. The electric power has transformed human life into an amazing experience of convenience, luxury, comfort and ease. A push by a finger to a button brings the light on and the same act sets hundreds of thousands of gadgets in action. This giant dinosaur has become slave of a human finger which now controls the electric power. It simply is a miracle, very real and· more bountiful than any other thing available on the planet. The electricity has revolutionized our houses, drawing rooms and kitchen with useful equipment.

The array of entertainment aids powered by electricity has created a fancy world around us. The coming into the existence of a power like electricity that obeyed the command of the human finger's touch inspired the inventions and innovations of a mind boggling range of electric equipment. In fact, all the manmade machines or gadgets wholly or partly run on electricity.

It created wonders ·of entertainment like cinema, radio, television, other audio-video systems. The electricity has enabled the man go to space, land on moon and harness natural powers and resources. The mining, construction, irrigation, transport, printing and other industrial activities are dependent on electric power. Even the computers won't work any wonders without the electricity. The electricity has penetrated in our lives to such an extent that if it is cut off for some time; the life comes to a standstill. Today, the progress of a society or a nation or economy is so dependent on electric power that all the power generating resources and options are being exploited or explored so that we have unrestrained supply of electric power. Oil, coal, water, air, sun light, tidal waves and atomic phenomena are being used for power generation. The research on hydrogen as fuel and controlled fusion process are going on at feverish pitch.

The oil and coal are non-renewable resources. Hydel power has limitations as no new rivers can be created. Solar energy is yet costly to harness. The wind energy too has limitations. The tidal wave processes are yet at an experimental stage. And so are hydrogen and fusion ideas. Conventional atomic energy clearly is the best pollution free option but it entails the tricky problem of atomic waste disposal.

Questions:

(i) *What has created a fancy world around us?* ***(1 Mark)***

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(ii) *What part of the human body controls the power of electricity?* **(1 Mark)**

(iii) *What happens when the electricity is cut off in the modern day city?* **(1 Mark)**

(iv) *Why hydel power has limitations?* **(1 Mark)**

(v) *Write one merit and demerit of nuclear power generation.* **(1 Mark)**

(b) *Read the Passage:*

Cholesterol is a wax like substance that is present in our body. It's an important component of our cell walls and other tissues, but it is considered to be harmful if in excess. It can lead to blockages caused by plaque formation in the heart's arteries causing heart disease and heart attacks. Such blockages can also happen in arteries, in the legs or in the brain. Cholesterol is produced in the liver, and the amount produced is influenced by our genes and many other factors. The food consumed by us has also an effect on cholesterol levels. Fatty foods, especially those high in saturated fats and foods high in simple sugars such as cold drinks increase cholesterol levels. Lack of physical activity and exercise also leads to elevated levels of cholesterol.

Cholesterol levels can be reduced by following a heart-healthy lifestyle, which includes regular physical activity for at least 30 minutes daily and a diet high in fruits and vegetables and low in saturated sugar. Statins are a group of drugs most recommended for those with high cholesterol. Red yeast rice has been shown to be effective in lowering cholesterol. Garlic and flaxseed can be included in the daily diet. Olive oil, Canola oil or other oils rich in monounsaturated fatty acids can be used for cooking in order to reduce cholesterol through food.

The ill-effects of high cholesterol take time to show up, and one may not realise it until it's a bit too late. Cholesterol, by itself is important because it insulates nerve cells and membranes. Being a fatty substance, it does not dissolve in the blood and is packaged into protein. There are 'good' HDL cholesterol and 'bad' LDL cholesterol. Bad cholesterol can stick to the smooth lining of the blood vessels, where it is absorbed, while HDL mops up excess bad cholesterol and removes it from blood vessels. Even moderate physical activity on a regul!1rbasis can help increase HDL cholesterol.

Exercise five days a week, whether you are overweight or underweight. Aerobic exercises like walking, cycling, swimming, slow jogging, dancing etc. for 45 minutes, three times a week and anaerobic exercises like weight training, and sprinting for another three days will help increase good and reduce bad cholesterol. In order to maximize your cardiovascular fitness, aerobic exercises should raise your heart to a certain level. This level is called heart zone. One should keep the heart rate elevated for at least 20 minutes. Always warm-up, stretch, and relax before and after any workout to avoid injuries. All these contribute to a healthier and fitter life.

(i) *Make notes, using headings, sub-headings and abbreviation wherever necessary giving a suitable title.* **(3 Marks)**

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(ii) Write a summary. ***(2 Marks)***

Answer

(a) (i) The array of entertainment aids powered by electricity has created a fancy world around us.

(ii) A push by a finger to a button brings the light on and the same act sets hundreds of thousands of gadgets in action. Power like electricity obeys the command of the human finger's touch. Hence, the tip of a human finger controls electric power by pressing switches.

(iii) The electricity has penetrated in our lives to such an extent that if the power (electricity) is cut off for some time, the life comes to a standstill.

(iv) Hydel power has limitations as no new rivers can be created by human endeavour.

(v) The merit of the nuclear power generation is that it is totally pollution free. The demerit of the nuclear power is that the nuclear waste disposal is very tricky and hazardous.

(b) (i) Note Making

Title: Good Cholesterol for a healthier life / Cholesterol and health

Notes:

1. Impact

1.1 leads to blockages

1.2 causes heart diseases

1.3 heart attacks

2. Reasons

2.1 plq formation in arteries

2.2 fatty foods

2.2.1 high in sat fats

2.2.2 lack of phys activity

3. Remedies

3.1 heart-healthy lifestyle

3.1.1 reg phys activity

3.1.2 diet high in fruits and veg

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3.2 statins

3.2.1 red yeast rice

3.2.2 garlic & flaxseeds

3.2.3 olive oil, canola oil

4. Types of CL

4.1 HDL- good

4.2 LDL- bad

5. For healthier & fitter life

5.1 Exercise five days a week

5.2 Aerobic exercises 45 mins, three times a week

5.2.1 walking

5.2.2 cycling

5.2.3 swimming

5.2.4 slow jogging

5.2.5 dancing

5.3 Anaerobic exercises three days a week

5.3.1 wt training

5.3.2 sprinting

List of / Key to abbreviations used:

sat. - saturated

phys. - physical

reg. - regular

veg. - vegetables

&-and

mins. - minutes

wt. -weight

plq- plaque

CL-Cholesterol

HCL- Good Cholesterol

LCL- Bad Cholesterol

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(ii) Summary:

Cholesterol, a wax-like substance present in our body, is an important component of our cell walls and other tissues. If present in excess, it can be very harmful. Our cholesterol levels are affected by the food we consume. We can reduce cholesterol levels by leading a heart- healthy life, doing regular physical activity and having a diet rich in fruits and vegetables. There are 'good' HDL cholesterol and 'bad' LDL cholesterol. To ensure an increase in our HDL level and to lead a healthier and fitter life, we must do aerobic and anaerobic exercises at least five times a week for around 45 minutes daily. All these contribute to a healthier and fitter life.

Question 8

(a) "A well dressed and groomed person is presumed to be organised and methodical, whereas a sloppy or shabby person fails to make a favourable impression". Discuss.

(2 Marks)

(b) (i) Choose the word which best expresses the meaning of the given word:

GERMANE

(1) Responsible

(2) Logical

(3) Possible

(4) Relevant. ***(1 Mark)***

(ii) Select a suitable antonym fer the word given under:

FIDELITY

(1) Commitment

(2) Inconstancy

(3) Ambitious

(4) Devotion ***(1 Mark)***

(iii) Change the following sentences to indirect speech:

'Why don't you go away for a few days?' Jenifer said to me. ***(1 Mark)***

(c) Write a precis and give an appropriate title to the passage given below:

We are bombarded by noise and sound in all our waking hours. We 'hear' conversations, news, gossips and many other forms of speech all the time. However, most of it is not listened to carefully and therefore, not understood, partially understood or misunderstood. A good listener does not only listen to the spoken words, but observes

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carefully the nonverbal cues to understand the complete message. He/she absorbs the given information's, processes it, understands its context and meaning and to form an accurate, reasoned, intelligent response.

Listening starts with hearing but goes beyond. Hearing, in other words is necessary but is not a sufficient condition for listening. Listening involves hearing with attention. Listening is a process that calls· for concentration. While, listening, one should also be observant. In other words, listening has to do with the ears, as well as with the eyes and the mind. Listening is to be understood as the total process that involves hearing with attention, being observant and making interpretations. Good communication is essentially an interactive process. It calls for participation and involvement. It is quite often a dialogue rather than a monologue. It is necessary to be interested and also show or make it abundantly clear that one is interested in knowing what the other person has to say.

Good listening is an art that can be cultivated. It relates to skills that can be developed. A good listener knows the art of getting much more than what the speaker is trying to convey. He knows how to prompt, persuade but not to cut off or interrupt what the other person has to say. At times the speaker may or may not be coherent, articulate and well organised in his thoughts and expressions. He may have it in his mind and yet he may fail to marshal the right words while communicating is thought.

The listener has to be objective, practical and in control pf his emotions. Often the understanding of a listener is coloured by his own emotions, judgments, opinions, and reactions to what is being said. ***(5 Marks)***

Answer

(a) Appearance is usually the first thing noticed about a person. A well dressed and groomed person is presumed to be organised and methodical, whereas a sloppy or shabby person fails to make a favourable impression. Therefore, dressing appropriately in all formal interactions is emphasised.

The dress code in office is generally formal. It constitutes of formal suits, trousers with plain white- or light-coloured shirts and leather shoes. Bright colours, jeans, T- shirts, especially with slogans and other informal wear are not allowed. For women, formal two-piece trouser or skirt sets or formal ethnic wear like saree is permissible.

(b) **(i)** (4) / Relevant

(ii) (2)/Inconstancy

(iii) Jenifer asked me why I didn't go away for a few days.

(c) **Précis**

Title: The Art of Listening / Hearing v. Listening

There is a vast difference between hearing and listening. Listening goes beyond hearing, it is hearing with attention and calls for concentration. One also needs to be observant,

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using not only one's ears but also one's eyes and mind. A good listener does not only listen to the spoken words but observes carefully the nonverbal cues to understand. Good listening needs participation and involvement and involves dialogue more than a monologue. It is an art that needs to be cultivated. A good listener knows how to prompt and persuade but not to cut off or interrupt what the other person has to say. Understanding of a listener is coloured by his own emotions, judgments, opinions, and reactions.

Question 9

(a) (i) Define chain network in communication. ***(2 Marks)***

OR

(ii) How 'Technology barrier' affects communication?

(b) (i) Choose the word which best expresses the meaning of the given word:

Sluggard

(1) Cheat

(2) Lazy

(3) Old

(4) Talkative ***(1 Mark)***

(ii) Choose the word which best expresses the meaning of the given word:

Turbulence

(1) Stillness

(2) Repose

(3) Agitation

(4) Calmness ***(1 Mark)***

(iii) Change the following sentence to indirect speech:

Mother said to her daughter, "May God grant you success in your examination".

(1 Mark)

(c) You are a purchase manager of Global Traders Pvt Ltd. You had ordered 100 units special kind of Bolts from a company SN Nut Bolts Pvt. Ltd in Mumbai. While checking, the consignment was found to be very poor in quality. Write a complaint letter to the Sales Manager to replace the order. ***(5 Marks)***

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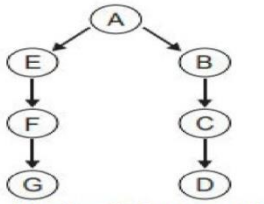
Answer

(a) (i) Chain Network in Communication

The communication pattern that follows the chain of command from the senior to the junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees. The supervisor /manager /CEO gives commands or instructions to those working under him/her in the organization. The chain network often takes up time, and communication may not be clear.

Example- B, C, D and E, F, G are the subordinates to A in the organizational hierarchy and receive commands from 'A'. This may be explained with the help of a diagram as below:



Chain of Command

OR

(ii) Technology Barriers

In the present world, communication modes are primarily technology driven. Communication technology is being constantly upgraded and new formats emerge ever so frequently. Anyone who is not tech friendly struggles to communicate effectively via the medium.

Moreover, an individual is swamped with a huge amount of information every day in the form of emails, texts and social updates. Multitasking is the norm these days. The information overload and trying to accomplish too many things together can result in gaps resulting in miscommunication.

(b) (i) (2) / Lazy

(ii) (3) / Agitation

(iii) Mother prayed that God might grant her daughter success in her examination.

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(c) Complaint Letter

Global Traders Pvt. Ltd.

27, Nai Sarak, Chandni Chowk,

New Delhi - 110006

Date: February 4, 2022

The Sales Manager,

SN Nut Bolts Pvt. Ltd.,

15, Industrial Road, Ramnagar,

Mumbai

Pin Code: xxx xxx

Dear Sir / Madam,

Subject: Complaint for consignment received on 3rd February, 2022.

Reference: Order No. XXXX –Dated 22nd December, 2021

With reference to above, an order for supply of 100 units of specific kind of bolts was placed on 22nd December, 2021 with product ID XXX and order no. XXXX. The consignment against this order was received on 3rd February, 2022. However, during inspection the above supplied consignment has been found to be of substandard / poor quality. As the required quality of above product has been specified to you earlier with order itself, you are requested to replace this consignment within a week positively. If you fail to do this, we shall be constrained to cancel the order and you would be made liable to compensate us for the losses caused to us due to above.

We shall be thankful for your quick response to replace the consignment keeping in view our long business relations.

Yours Faithfully / Sincerely,

Mr. CVB

Purchase Head

Global Traders Pvt. Ltd.

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Question 10

(a) "Human behaviour is not under the sole control of emotion or deliberation but results from the interaction of these two processes". Explain. ***(2 Marks)***

(b) (i) Change the sentence from Active to Passive Voice.

I ran the obstacle course in record time. ***(1 Mark)***

(ii) Change the sentence from Passive to Active Voice.

Money was generously donated to the homeless shelter by Larry. ***(1 Mark)***

(iii) Change the following sentence into indirect speech.

The students said to their teacher, 'please allow us to watch the cricket match.'

(1 Mark)

(b) Corruption has become the order of the day. It has entered all walks of life.

Write an article for your school magazine in 250 words on 'The Role of Youth in combating corruption'. ***(5 Marks)***

Answer

(a) Emotional Awareness and Control: "Human behaviour is not under the sole control of emotion or deliberation but results from the interaction of these two processes," Loewenstein said.

Emotions are a powerful force that affect our perception of reality regardless of how hard we try to remain unbiased. In fact, intense emotions can undermine a person's capacity for rational decision-making, even when the individual is aware of the need to make careful decisions.

Consequently, emotional awareness is a necessary element of good communication. While interacting with another person or a group, it is important to understand the emotions you and he/ she/ they are bringing to the discussion. Managing your own emotions and at the same time respecting the emotional state of others helps in smooth interaction.

(b) (i) The obstacle course was run by me in record time.

(ii) Larry generously donated money to the homeless shelter.

(iii) The students requested / urged / begged their teacher to allow / kindly allow them to watch the cricket match.

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(c) Article

'The Role of Youth in combating corruption'

By .....(Writer's name)

Corruption has become the order of the day. It has spread its tentacles in all walks of life. It seems that corruption has spared no one; everyone is in the grip of corruption. It is ruining power, society and the country as well. There is an urgent need to check this rampant corruption otherwise we will land ourselves nowhere.

A beginning can be made in this direction by holding anti-corruption drives. The ill-effects of corruption in public life should be publicised through the internet and blogs. The uprising young citizens need to join hands as one and battle against corruption. They need to spread awareness, more so in rural areas and equip them with knowledge about this burning issue. Recently the name of Anna Hazare has become synonymous with combating corruption so the youth of India have an idol among them whom they can follow. The dedicated efforts of the honest youth are bound to succeed in the long run-in demolishing and vanquishing this social evil which has earned us a bad name.

Youth can play an important role in combating corruption. They can arrange awareness campaigns about corruption and make an anti-corruption youth brigade, to keep a vigil over the offices.

Youth can make people understand that they should not resort to corrupt practices to get their work done. Youngsters must discourage people to offer or receive bribes. If no one gives any money, work will be done automatically.

The youth must make the general public aware of various anti-corruption laws and the right to information so that they come in handy at the most opportune time. Youth are the future of the country. A lot rests on their strong shoulders.

Question 11

(a) *"Understanding cultural aspects of communication is absolutely necessary otherwise it will become a barrier to communication". Discuss.* ***(2 Marks)***

(b) *Select the correct meaning of Idioms/ Phrases given below:*

(i) *In the pink of health*

(1) *Prolonged suffering*

(2) *Emergency situation*

(3) *Challenging situation*

(4) *Best of health* ***(1 Mark)***

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(ii) Out of the blue

(1) Quietly

(2) Unexpectedly

(3) Angrily

(4) Revengefully **(1 Mark)**

(iii) Change the sentence into passive voice,

The builder is building the flat. **(1 Mark)**

(iv) Choose the word which best expresses the meaning of the given word.

Precedence

(1) Priority

(2) Uprise

(3) Present

(4) Insignificance **(1 Mark)**

(c) There is an urgent job opportunity in an established chartered accountancy firm for the jab of qualified/competent Chattered Accountant. Prepare a detailed resume for a candidate applying for the post. **(4 Marks)**

Answer

(a) Understanding cultural aspects of communication refer to having knowledge of different cultures in order to communicate effectively with cross culture people. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences amongst people from various countries, regions tribes and religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications.

(b) **(i)** (4) / Best of health

(ii) (2) / Unexpectedly

(iii) The flat is being built by the builder.

(iv) (1) / Priority

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(c) Resume / Bio-Data / CV

Varun Gupta
A-29, Kirti Nagar New Delhi, 1100xx
Email Id:xxx@gmail.com
Mobil No. +91xxxxxxxxxx

CAREER OBJECTIVE:

Seeking a challenging professional career as a Chartered Accountant with an established firm of Chartered Accountants that provides an opportunity to utilize my professional skills & abilities in the relevant field.

WORK EXPERIENCE

- As an Articled Assistant in SN & Associates, a firm of Chartered Accountants.
- As a Chartered Accountant with AS & Associates, a firm of Chartered Accountants for about three years with the following job responsibilities:

JOB RESPONSIBILITIES

- Performed statutory audit of companies, audit of firms and other type of organization viz. proprietary concerns, charitable institutions etc.
- Handled Tax Audits, GST Audits.
- Rendered other financial services, consultancy etc.

PROFESSIONAL QUALIFICATION:

- Chartered Accountant

ACADEMIC QUALIFICATION:

- Bachelor of Commerce from Delhi University. Year of Passing: XXXX
- LL.B. from Delhi University. Year of Passing: XXXX

COMPETANCY AREAS

- Statutory Audit / Tax & GST Audit
- Taxation
- Project Financing
- Other professional services

ACHIEVEMENTS:

- Represented school as a part of the student delegation from the NCR region for the Event:
  - "CONFLUENCE-2000", held at HYDERABAD.

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- Captain of the school cricket team.
- State-level cricket player.

HONOURS AND AWARDS:

- Won First prize in Inter-school Quiz Competition
- A consistent scholarship holder school.
- Won 2nd Prize in the Inter-school Debate Competition.

COMPUTER PROFICIENCY

- SAP, Advance Excel, MIS, Payroll, MS- Office, Tally
- Internet Applications

LANGUAGES KNOWN

- English, Hindi

REFERENCES

Available upon request

PERSONAL DETAILS

- Name: Varun Gupta
- Father's Name: Mr. S.D Gupta
- Date of birth: xxx, 19xx
- Gender: Male
- Marital Status: Bachelor
- Holding valid passport

DECLARATION

I solemnly declare that all the above information is correct to the best of my knowledge and belief.

Date: Signature

Place: (Varun Gupta)

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NOV 2022

PAPER – 2: BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAW

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) X agrees to pay Y ₹ 1,00,000/-, if Y kills Z. To pay Y, X borrows ₹ 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

(i) Between X and Y.

(ii) Between X and W ***(4 Marks)***

(b) Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 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 ₹ 1,50,000/-.

Mr. R informed the company that he has 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? ***(4 Marks)***

(c) Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. ***(4 Marks)***

Answer

(a) Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by

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law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

(i) X agrees to give ₹ 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.

(ii) X borrows ₹ 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

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

Doctrine of the Indoor Management

According to the Doctrine of the Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-*the Royal British Bank vs. Turquand.* (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ₹ 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 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.

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(c) Sale of unascertained goods and Appropriation:

Where there is a contract for the sale of unascertained goods by description and goods of that description are in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

Whereas, Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials elements are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

Question 2

(a) Explain the following statements in the light of provisions of Indian Contract Act, 1872:

(i) "Agreements made out of love and affection are valid agreements."

(ii) "Promise to pay a time barred debt cannot be enforced." ***(7 Marks)***

(b) "A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership".

In line of above statement clearly elaborate the difference between LLP and LLC.

(5 Marks)

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Answer

(a) (i) **Agreements made out of love and affection are valid agreements:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

(A) It must be made out of natural love and affection between the parties.

(B) Parties must stand in near relationship to each other.

(C) It must be in writing.

(D) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

(ii) **Promise to pay a time barred debt cannot be enforced:** According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration.

Hence, this statement is not correct.

Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

(b) Distinction between Limited Liability Partnership (LLP) and Limited Liability Company (LLC)

S. No.	Basis	LLP	Limited Liability Company (LLC)
1.	**Regulating Act**	The LLP Act, 2008.	The Companies Act, 2013.
2.	**Members/ Partners**	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	**Internal governance structure**	The internal governance structure of a LLP is governed by agreement	The internal governance structure of a company is regulated by statute (i.e.,

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		between the partners.	Companies Act, 2013) read with its Memorandum of Association and Articles of Association.
4.	**Name**	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	**No. of members/ partners**	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners of the LLP can be individuals/or body corporate through the nominees.	**Private company:** Minimum – 2 members Maximum 200 members **Public company:** Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	**Liability of members/ partners**	Liability of a partners is limited to the extent of agreed contribution.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	**Management**	The business of the LLP managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	**Minimum number of directors/designated partners**	2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

Question 3

(a) *Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932?* ***(6 Marks)***

(b) *Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other*

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necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ₹15 Lakhs inclusive of ₹7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ₹ 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount- of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother? ***(6 Marks)***

Answer

(a) Expulsion of partner and factors to be kept in mind:

As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

(i) the power of expulsion must have existed in a contract between the partners;

(ii) the power has been exercised by a majority of the partners; and

(iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm and shall be null and void.

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

(i) The expulsion must be in the interest of the partnership

(ii) The partner to be expelled is served with a notice

(iii) He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

(b) (i) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his

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condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ₹ 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ₹ 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

Question 4

(a) What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? ***(6 Marks)***

(b) "Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India. Also, explain the rights unaffected due to non-registration of firms. ***(6 Marks)***

Answer

(a) Right of re-sale [Section 54 of the Sale of Goods Act, 1930]:

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

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It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) **Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods:** The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) **A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale:** Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) **Where the property in goods has not passed to the buyer:** The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

(b) It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

Following are the consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. These disabilities briefly are as follows:

(i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

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(iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Following are the Rights unaffected due to non-registration of firms: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Question 5

(a) *Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.*

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

(i) *Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.*

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(ii) *Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.* ***(6 Marks)***

(b) (i) *Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ₹ 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013?*

(4 Marks)

(ii) *Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.* ***(2 Marks)***

Answer

(a) (i) Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.

According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K.

Alternate Answer

(a) (i) According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the instant case, Mr. K has made known to Mr. J the purpose of his purchase and relied on his skill and judgement. It was the duty of Mr. J to supply the marbles fit

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for that purpose including for second floor. Since the marbles supplied were not fit for second floor Mr. J is liable to replace the marbles to the extent not fit for that purpose.

Duty of Mr. K (the buyer) As per the above doctrine it was the duty of the buyer Mr. K to make known to Mr. J the purpose of his purchase of marbles. He has fully performed his part arranging the visit of Mr. J to the site.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K.

Considering the above provisions Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr, J when he has made him known about that and relied on his skill and judgement.

(ii) According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

Here, Mr. J supplied the boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Even though the tiles were laid in the car parking space of Mr. K and got damaged later because of vehicle used for unloading of cement bags were beyond the reasonable weight. Hence, the seller i.e., M/s Makrana Marbles is not liable as the buyer Mr. K as before laying down the tiles, has to satisfy himself that the tiles will serve the specific purpose i.e., can be used for car parking space only.

Therefore, the replacement of the damaged tiles cannot be imposed on M/s Makrana Marbles.

(b) (i) Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

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(ii) **Listed company:** As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

Question 6

(a) *Differentiate between Novation and Alteration as per the Indian Contract Act, 1872.* ***(5 Marks)***

(b) *What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?* ***(4 Marks)***

(c) *Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.* ***(3 Marks)***

Answer

(a) **Novation and Alteration:** The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. Still there is a difference between these two.

1. **Meaning:** Novation means substitution of an existing contract with a new one. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties.
2. **Change in terms and conditions and parties:** Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
3. **Substitution of new contract:** In case of novation, there is altogether a substitution of new contract in place of the old contract. But in case of alteration, it is not essential to substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.

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(b) Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common.

Basis of difference	Partnership	Co-ownership
1. **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.
2. **Implied agency**	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. **Nature of interest**	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
4. **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.

(c) Mike LLC is incorporated in Singapore and having a place of business in Pune, India. Since, Mike LLC is incorporated outside India and having a Place of business in India, hence it is a foreign Company.

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.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any **three** questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *Read the passage given below and answer the questions that follows:*

To make our life meaningful, we need to mind our thoughts, for our thoughts are the foundation, the inspiration, and the motivating power of our deeds. We create our entire world the way we think. Thoughts are the causes and the conditions are the effects.

Our circumstances and conditions are not dictated by· the world outside; it is the world inside us that creates the outside. Self - awareness comes from the mind, which means soul. Mind is the sum total of the states of consciousness we have the power to choose and think. Krishna says: "No man resteth a movement inactive." Even when inactive on the bodily plane, we are all the time acting on the thoughts plane. Therefore, if we observe ourselves, we can easily mould our thoughts. If our thoughts are pure and noble, our actions will naturally follow the same pattern. If our thoughts are filled with jealousy, hatred and greed, our actions will reflect the same attributes.

Karmically, however, a thought or intent is more responsible and dynamic than an act. One may perform a charitable act, but if one does not think charitably and is doing the act just for the sake of gain and glory, it is one's thoughts that will determine the result. Theosophy teaches us that every thought, no matter how fleeting, leaves a seed in the mind of thinker. These small seed together go to make up a large thought seed and determine one's general character. Our thoughts affect our whole body. Each thought once generated and sent out becomes independent of the brain and mind, and we live upon its own energy depending upon its intensity.

Trying to keep a thought from our mind can produce the very state we are trying to avoid. We can alter our environment to create the mood. When, for instance, we are depressed, if we sit by ourselves trying to think cheerful thoughts, we often do not succeed. But if we mix with people who are cheerful we can bring about a change in our mood and thoughts. Every thought we think, every act we perform, creates in us an impression, like everything else, and is subject to cyclic law and becomes repetitive in our mind. So, we alone have the choice to create our thoughts and develop the kind of impression that makes our action more positive.

Let us choose the thought seeds of right ideas, noble and courageous aspirations that will be received by minds of the same nature. Right introspection will be required of us to determine what we easily deserve to effect. Everything in the universe is inter-related and inter-dependent, that we live in one another and by accepting the grand principle of

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universal brotherhood, we shall be in a position to appreciate what a heavy responsibility is ever ours to think right. Let us reflect and send loving and helpful thoughts and lighten the load of the world's suffering.

Questions:

(i) How do our thoughts affect our action? ***(2 Marks)***

(ii) How can we change our mood when we are depressed? ***(2 Marks)***

(iii) Find word in the passage which has a meaning similar to the words given below:

To look into one's thoughts and feelings. ***(1 Marks)***

(b) Read the passage:

In nature, the ability to change colour can be a key to survival. Vision is a very important sense in much of the animal kingdom, and many animals have come up with unique ways to use this sense to enhance their own survival. They may use this superpower to vanish into their environments or to boldly assert their dominance. The colour of animals is by no means a matter of chance; it depends on many considerations, but in the majority of cases tends to protect the animal from danger by rendering it less conspicuous. Perhaps it may be said that if colouring is mainly protective, there ought to be but few brightly coloured animals. There are, however, not a few cases in which vivid colours are themselves protective. The kingfisher itself, though so brightly coloured, is by no means easy to see. The blue harmonizes with the water, and the bird as it darts along the stream looks almost like a flash of sunlight.

Desert animals are generally the colour of the desert. Thus, for instance, the lion, the antelope, and the wild donkey are all sand-coloured. "Indeed," says Canon Tristram, "in the desert, where neither tree, brushwood, nor even undulation of the surface affords the slightest protection to its foes, a modification of colour assimilated to that of the surrounding country is necessary. Hence, without exception, the upper plumage of every bird, and the fur of all the smaller mammals and the skin of all the snakes and lizards, is of one uniform sand colour."

The next point is the colour of the mature caterpillars, some of which are brown. This probably makes the caterpillar even more conspicuous among the green leaves than would otherwise be the case. Let us see, then, whether the habits of the insect will throw any light upon the riddle.

What would you do if you were a big caterpillar? Why, like most other defenceless creatures, you would feed by night, and lie concealed by day. So do these caterpillars. When the morning light comes, they creep down the stem of the food plant, and lie concealed among the thick herbage and dry sticks and leaves, near the ground, and it is obvious that under such circumstances the brown colour really becomes a protection. It might indeed be argued that the caterpillars, having become brown, concealed themselves on the ground, and that we were reversing the state of things. But this is not

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so, because, while we may say as a rule 'that large caterpillars feed by night and lie concealed by day, it is by no means always the case that they are brown; some of them still retaining the green colour.

We may then conclude that the habit of concealing themselves by day came first, and that the brown colour is a later adaptation.

(i) Make Notes, using headings, Sub-headings, and abbreviations whenever necessary. ***(3 Marks)***

(ii) Write a summary. ***(2 Marks)***

Answers

(a) (i) We create our entire world the way we think. Thoughts are the causes and the conditions are the effect. If our thoughts are pure and noble, our actions will naturally follow the same pattern. If our thoughts are filled with jealously, hatred and greed, our actions will reflect the same attributes. Thus, every thought seed is generated and affect our action.

(ii) We can alter our environment to create our mood. When, for instance, we are depressed, if we sit by ourselves trying to think cheerful thoughts, we often do not succeed. But if we mix with people who are cheerful, we can bring about a change in our mood and thoughts. So, we need to change our environment to change our mood.

(iii) Introspection

(b) (i) Note Making (Animal Kingdom)

Notes:

1. Cl. of anmls
   - 1.1 adpt to surround envnt
   - 1.2 Cl. change nec for safety and survival
   - 1.3 Cl. adptn makes them less consip.
2. The kngfshr
   - 2.1 Brightly clred
   - 2.2 But harmonizes with blue cl. of water
   - 2.3 is rarely visible
3. Dsrt anmls
   - 3.1 Lion, antelope, wild donkey are sand clred
   - 3.2 No trees necessitate cl adptn for safety

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3.3 Snakes and lizards are of sand Cl.

4. The Ctrplr

3.4 Mature ones are brown

3.5 Defnsls- creatures

3.6 The brown Cl conceals them among herbage and leaves

3.7 Feed by night and lie concled in day

List of / Key to abbreviations used:

a. Cl - Colour

b. Anmls - Animals

c. envnt. - Environment

d. adpt - Adapted

e. Nec - Necessary

f. Adptn - Adaption

g. Consip - Conspicuous

h. Kngfshr - kingfisher

i. Dsrt - Desert

j. Clred - Coloured

k. Defnsls - Defenceless

l. Ctrplr - Caterpillar

m. Concled - concealed

(ii) Summary:

Colour Camouflage is a necessity for the animal kingdom required for its existence and survival. Animals adapt to the colour of their surroundings to become less visible to their enemies. The Kingfisher's blue colour adapts to the colour of water as it dives into it. Desert animals like lion, antelope and wild donkey are sand coloured making them less visible to their opponents. The caterpillar although of green colour adapts the colour brown for their safety. The brown colour helps to conceal itself in herbage and ground. Therefore, colour acts as a dense mechanism for all animals. It allows them to hide from predators and catch their prey.

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Question 8

(a) *Courteousness is the important characteristics of effective communication. Comment.* **(2 Marks)**

(b) (i) *Choose the correct meaning of given word: PATHOS.*

(1) *Five*

(2) *Emotion*

(3) *Fidelity*

(4) *Bitter* **(1 Marks)**

(ii) *Select the suitable antonym for the- given word: ELEGANT*

(1) *Stylish*

(2) *Bombastic*

(3) *Palatial*

(4) *Gauche* **(1 Marks)**

(iii) *Change the following sentence into direct speech:*

The policeman asked the stranger who he was. **(1 Marks)**

(c) *Write Precis and give appropriate title to the passage given below:*

There is an enemy beneath our feet-an enemy more deadly for his complete impartiality. He recognizes no national boundaries, no political parties. Everyone in the world is threatened by him. The enemy is the Earth itself. When an earthquake strikes, the world trembles. The power of a quake is greater than anything man himself can produce.

But today scientists are directing a great deal of their effort into finding some way-of combating earthquakes and, perhaps at some time shortly, mankind will have discovered a means of protecting itself from earthquakes. An earthquake strikes without warning. When it does, its power is immense. If it strikes a modern city, the damage it causes is as great as if it has struck a primitive village. Gas mains burst, explosions are caused and fires are started. Underground railways are wrecked. Buildings collapse, bridges fall, dams burst and gaping crevices appear in busy streets.

A modern city when struck is reduced -to a nibble. A quake strikes plains, seas and mountains causing all round destruction. Scientists are trying to find out means to combat earthquakes, to predict the origin of the quake so that precaution can be taken to save man and property from destruction.

If the quake strikes at sea, huge tidal waves sweep inland. If it strikes in mountain regions, avalanches roar down into the valley. Consider the terrifying statistics from the

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past 1755: Lisbon, capital of Portugal - the city was destroyed entirely and 450 killed; 1970: Peru - 50,000 killed.

In 1968, an earthquake struck Alaska. As this is a relatively unpopulated part, only a few people were killed. But this likely was one of the most powerful quakes ever to have hit the world. Geologists estimate that during the tremors, the whole of the state moved over 80 feet farther west into the Pacific Ocean. Imagine the power of something that can move an entire subcontinent. This is the problem that scientists face. They are dealing with forces so immense that man cannot hope to resist them. All that can be done is to try to pinpoint just where the earthquake will strike and work from there. At least some precautionary measures can be taken at that time to save lives and property. ***(5 Marks)***

Answer

(a) Courtesy implies that the sender is polite, considerate, respectful, open and honest with the receiver. The sender of the message takes into consideration the viewpoints and feelings of the receiver of the message. Make sure nothing offensive or with hidden negative tone is included.

(b) **(i)** (2) Emotion

(ii) (4) Gauche

(iii) The policeman said to / inquired the stranger, "Who are you?"

(c) **Precis:**

Title: Disaster in Earthquake/Earthquake Damages/ Losing the Ground: Nature of Earthquakes / Earthquake- Great enemy of mankind

An earthquake causes great damage to life and property without recognising any boundaries or political affiliations, small or big cities. It is a great enemy of mankind. Statistics show that the immense loss of life is due to quakes, including those in Peru and Portugal and they were so terrible that they could move the entire continent. The Alaska earthquake of 1968 killed few people, but the state moved over 80 feet farther west into the Pacific Ocean. Scientists are finding ways to combat the disaster, but the problem is that it strikes without warning, and only precautionary measures can be taken to save lives and property.

Question 9

(a) How attitude barriers affect communication in the organization? ***(2 Marks)***

OR

Explain the term Aesthetic communication.

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(b) (i) *Choose the word which best expresses the meaning of the given word:*

ALTER EGO

(1) *Self-esteem*

(2) *Second self*

(3) *Competitor*

(4) *Egocentric* ***(1 Marks)***

(ii) *Choose the word which best expresses the meaning of the given word:*

AMBIVALENT

(1) *Uncertain*

(2) *Definite*

(3) *Dramatic*

(4) *Pensive* ***(1 Marks)***

(iii) *Change the following sentence into indirect speech:*

The Tutor rebuked Sonu saying "If you do not finish your project, I'll call your mother." ***(1 Marks)***

(c) *Hectic Schedule of academic leads to neglect of sports and co-curricular activities. It badly affects the moulding of personality of an individual and his overall development. Keeping in view the need for sports and co-curricular activities, write an article in about 200 words.* ***(5 Marks)***

Answer

(a) (i) **Attitude Barrier -** Personal attitude of employees can affect communication within the organization. A proactive, motivated worker will facilitate the communication process, whereas a dissatisfied, disgruntled, shy, introvert or lazy employee can delay, hesitate in taking the initiative, or refuse to communicate. Attitude problems can be addressed by good management and regular interaction with staff members.

OR

(ii) **Aesthetic Communication-** Communicate / sharing our thoughts through art forms such as dancing, painting, sculpting, music are also means of communication and is called aesthetic communication. They distinctly convey the ideas and thoughts of the artist.

(b) (i) (2) Second self

(ii) (1) Uncertain

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(iii) The Tutor scolded/rebuked Sonu and said that he would call his mother, if he did not finish his project. / The Tutor scolded/rebuked Sonu and said that, if he did not finish his project, he would call his mother.

(c) Article

Need for sports and co-curricular activities / Sports and co-curricular activities-Impact on personality

By.... (Writer's / Author's name)

It is a well-pronounced dictum that a sound mind dwells in a sound body. So, for the harmonious development of personality, one needs both physical and co-curricular activities along with the academics. Sports and co-curricular activities are meant to bring social and intellectual skills, moral values, and character appeal among students. Co-curricular activities fuel learning by stimulating creative thoughts, developing interest and talents, and offering the chance to switch off and do something one really enjoys. Further participation in sports develops personality traits like cooperation, teamwork, leadership, competition, and adventure. Ignorance of any of these aspects of life is detrimental. But in the modern field of education, our students are much burdened by the hectic schedule of academics. They are too pre-occupied to even eat or engage in other activities. Such an unhealthy state of work is very dangerous for their growth.

If they continue to fail to develop the other traits of personality at the expense of education, their lives will become a stumbling block not only for the individual but for the nation as well.

So, our educators should think along the healthy lines of developing a balanced personality among all because the insufficiency of one or more traits makes life troublesome.

Question 10

(a) Explain any two types of formal communication. ***(2 Marks)***

(b) (i) Change the sentence from active to passive voice:

She said to me, "It has been raining heavily and you cannot go. ***(1 Marks)***

(ii) Change the sentence from passive to active voice:

The girls who had not done their homework were punished by the teacher. ***(1 Marks)***

(iii) Change the following sentence to Indirect Speech:

Had he delivered the letter? ***(1 Marks)***

(c) Write an article of about 250 words on the topic "Why is the new generation worried a lot?" ***(5 Marks)***

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Answer

(a) **Formal communication**- Formal communication, both oral and written, follows certain rules, principles and conventions. The hierarchy in the organization has to be followed. Formal format, style and language have to be used. The communication pattern can be vertical, horizontal or diagonal.

Vertical: Information can flow upwards or downwards in the organization. Data that is collected flows up to the top levels of management for review and decision making, while instructions and orders are passed down from the management/ seniors to the subordinates for implementation.

Horizontal: Horizontal communication involves two employees of the organization at the same level. For example, the managers of a project in a company may hold a regular daily, weekly, or monthly meeting to discuss the progress of a project.

Diagonal: Cross-functional communication between employees at different levels of the organizational hierarchy is described as diagonal communication. Diagonal communication is increasingly common in larger organizations. It reduces the chances of distortion or misinterpretation by encouraging direct communication between the relevant parties. For example, a Junior Engineer reports directly to the General Manager regarding the progress on a project.

Note: Out of the above three, any two can be given as a part of main answer.

(b) (i) **Active to passive voice:**

I was said / told by her that it had been raining heavily and I could not go..

OR

Direct to indirect speech:

She said to / told me that it had been raining heavily and I could not go

(ii) The teacher punished the girls who had not done their homework.

(iii) **Indirect speech:**

Someone asked whether / if he had delivered the letter.

OR

Active to passive voice: Had the letter been delivered by him? /If /Whether the letter had been delivered by him?

(c) **Article:**

'Why is the new generation worried a lot?'

By.....(Author / Writer's name)

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Recently the Harvard Business Review published a study on mental health in the workplace that paints a bleak picture of anxiety among young people. In the survey, majority of those aged between 24 and 39, said they'd left a job partly for mental health reasons. For those between 18-23, the percentage spikes to 75 percent, as compared to 20 percent among the general population.

It is a well-established fact that we have stepped forward and progressed commendably with the fast-developing nations of the world. Indian minds are earning a lot of name and fame in far-away nations. Curing fatal diseases is no longer a dream. We communicate with our near and dear ones on the screen, however, far they may be. Our tickets are booked online. With the advancement of science and technology, with just one click on the internet we get any required information.

Thus, we are leading a life of luxury and freedom as well as rest and repose. Despite all this, our youngsters are a worried lot. The basic reason being that we are not safe, protected and free. We are living under constant fear. There are not adequate resources for employment. Terrorists and extremists are bent on disrupting the peace and harmony among people. Thus, there prevails a sense of chaos, dissatisfaction, terror, disruption, confusion, fear and anxiety. We are blindly following western civilization while losing our moral and social values. Many social evils have entered our lives. All these reasons have made the modern generation a worried lot.

Question 11

(a) What do you mean by grapevine communication? ***(2 Marks)***

(b) Select the correct meaning of Idioms/Phrases given below:

(i) Grasping at Straws

(1) Totally calm.

(2) Totally desperate.

(3) Totally fake.

(4) Totally real. ***(1 Marks)***

(ii) You've got your work cut out for you.

(1) Easy task.

(2) Settled task.

(3) Good Task.

(4) Difficult task. ***(1 Marks)***

(iii) Change the sentence into passive voice.

One should keep one's promises. ***(1 Marks)***

(iv) Choose the word which best expresses the meaning of the given word:

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Blandishment

(1) Flattery

(2) Terrifying

(3) Funny

(4) Denial ***(1 Marks)***

(c) You are Mr. M, a general manager in P Mall. Write an official email to the employees of P Mall about the introduction of new dress code and office timings as part of marketing strategy with effect from 22.12.2022. ***(4 Marks)***

Answer

(a) Employees in an organization interact with each other outside the formal domain. Such communication is called grapevine communication (gossip in the office). Employees of different departments and varied levels meet and discuss matters casually and informally. The grapevine satisfies the social needs of the people and help in building relationships. It is also useful in addressing certain needs and grievances of employees.

(b) **(i)** (2) Totally desperate

(ii) (4) Difficult task

(iii) Promises should be kept. / One's promises should be kept / One's promises should be kept by himself / herself.

(iv) (1) Flattery

(c) From: mpmall@gmail.com

To: E-mail addresses of the employees

CC/BCC: Mr. G, Mr. H and other departmental heads

Subject: Implementation of a new dress code and shift in office hours for all employees from December 22, 2022 onwards.

Dear Sir/Madam,

Greetings of the Day!

As you are all aware, our mall has developed a new marketing strategy, and the following changes will take effect on December 22, 2022.

(a) A new dress code has been introduced for employees in the mall, as below:

(i) Sky blue shirt and black pants for male employees on weekdays and striped shirt and blue pants on weekends.

(ii) Male employees should wear a Kurta-Pajama on festivals.

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(iii) During the week, female employees are expected to wear white shirts and red skirts and striped shirts and white skirts on weekends.

(iv) Female employees should wear traditional clothes such as saree during festivals.

(b) New office hours have been introduced, i.e., the day begins at 11 a.m. and ends at 10.30 p.m.

Kindly follow / adhere to the dress code and office timings meticulously.

Thank you and best wishes

Mr. M,

General Manager

P Mall, New Delhi

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JUNE 2023

PAPER – 2: BUSINESS LAWS & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited ₹ 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.*

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? ***(4 Marks)***

(b) *ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 crores and convertible preference shares worth ₹ 10 crores during the financial year 2022-23. After that the total share capital of the company is ₹ 100 crores.*

Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company. ***(4 Marks)***

(c) *Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930?* ***(4 Marks)***

Answer

(a) As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing;

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on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

(b) **Associate company [Section 2(6) of the Companies Act, 2013]** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

The term "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 crore and convertible preference shares worth ₹10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ₹ 100 crore.

Since XYZ Limited is holding only 15% significant influence (₹ 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.

Important Note:

It can be assumed that the convertible preference shareholders are having voting rights and due to this, XYZ Limited is holding overall 25% paid up share capital in ABC Limited (with voting rights). Hence, XYZ limited is having significant control over ABC Limited and therefore XYZ is an Associate company of ABC Limited.

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

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

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

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

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Question 2

(a) *As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872.* ***(7 Marks)***

(b) *Discuss the liabilities of Limited Liability Partnership (LLP) and its partners in case of fraud as per the provisions of the Limited Liability Partnership Act, 2008.* ***(5 Marks)***

Answer

(a) Under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party; but the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

The aforesaid rule, that **stranger to a contract cannot sue is known as a "doctrine of privity of contract",** is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

(1) **In the case of trust,** a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

(2) **In the case of a family settlement,** if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement, may enforce the agreement.

(3) **In the case of certain marriage contracts/arrangements,** a provision may be made for the benefit of a person, who may file a suit though he is not a party to the agreement.

(4) **In the case of assignment of a contract,** when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

(5) **Acknowledgement or estoppel** – Where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

(6) **In the case of covenant running with the land,** the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

(7) **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

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(b) Unlimited liability in case of fraud (Section 30 of the Limited Liability Partnership Act, 2008):

(1) In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners,
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose
- shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner, unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) **Punishment:** Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with

- imprisonment for a term up to 5 years and
- with fine which shall not be less than ₹ 50,000, but which may extend to ₹ 5 Lakhs.

(3) **Compensations on commission of fraud:** Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Question 3

(a) Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932. ***(6 Marks)***

(b) (i) Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. ***(2 Marks)***

(ii) Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on

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1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M 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. ***(4 Marks)***

Answer

(a) **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-

(a) The firm's name

(b) The place or principal place of business of the firm,

(c) The names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

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

(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.

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(b) (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. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

(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. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.

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

Question 4

(a) Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale. ***(6 Marks)***

(b) P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932. ***(6 Marks)***

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Answer

(a) If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. **Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific and where damages would not be an adequate remedy.
3. **Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –
   (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
   (ii) sue the seller for damages for breach of warranty.
4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as:
   - subsisting and wait till the date of delivery, or
   - he may treat the contract as rescinded and sue for damages for the breach.
5. **Suit for interest:**
   (1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.
   (2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

(b) According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was a partner.

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As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. S under the provisions of Section 32.

Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.

Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S.

Therefore, S can recover the payment from the Firm, P, Q, R and E.

Question 5

(a) (i) An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. ***(2 Marks)***

(ii) Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930. ***(4 Marks)***

(b) 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. ***(6 Marks)***

Answer

(a) (i) According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.

In the given question, the auction sale is complete on 7th March, 2023.

(ii) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

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In this case, M received the goods by sample from L but since the goods were not according to the sample, **M can reject the goods and can sue L.**

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

(b) **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.

Question 6

(a) Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872. ***(5 Marks)***

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(b) *What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932?* ***(4 Marks)***

(c) *ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ₹ 35 lakhs and turnover of ₹ 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.* ***(3 Marks)***

Answer

(a) The differences between void contract and voidable contract are as follows:

S. No.	Basis	Void Contract	Voidable Contract
1	**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.
2	**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.
3	**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.
4	**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 the contract.
5	**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.

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(b) **Conduct of the Business (Section 12 of the Indian Partnership Act, 1932):** Subject to contract between the partners-

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all partners; and

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

(e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

(c) **Small Company:** Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—

(i) **paid-up share capital** of which does not exceed **₹ 4 crore** or such higher amount as may be prescribed which shall not be more than ₹ 10 crore; and

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

Exceptions: This clause shall not apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, since the paid-up capital of ABC Private Limited is ₹ 35 Lakhs and turnover is ₹ 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any **three** questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *Answer any THREE questions out of the remaining Four questions.*

Read the passage carefully and answer the questions given below:

Air pollution is an issue which concerns us all alike. Air pollutant is defined as a substance which is present in air while normally it is not there or present in an amount exceeding the normal concentrations. It could either be gaseous or a particulate matter. The important and harmful polluting gases are carbon monoxide, carbon dioxide, ozone and oxides of sulphur and nitrogen. The common particulate pollutants are the dusts of various inorganic or organic origins. Although we often talk of the outdoor air pollution caused by industrial and vehicular exhausts, the indoor pollution may prove to be as or a more important cause of health problems.

Recognition of air pollution is relatively recent. It is not uncommon to experience a feeling of 'suffocation' in a closed environment. It is often ascribed to the lack of oxygen. Fortunately, however, the composition of air is remarkably constant all over the world. There is about 79 percent nitrogen and 21 percent oxygen in the air and the other gas forming a very small fraction. It is true that carbon dioxide exhaled out of lungs may accumulate in a closed and overcrowded place. But such an increase is usually small and temporary unless the room is really airtight. Exposure to poisonous gases such as carbon monoxide may occur in a closed room, heated by burning coal inside. This may also prove to be fatal.

What is more common in a poorly ventilated home is a vague constellation of symptoms described as the sick-building syndrome. It is characterized by a general feeling of malaise, headache, dizziness and irritation of mucous membranes. It may also be accompanied by nausea, itching, aches, pains and depression. Sick building syndrome is getting commoner in big cities with the small houses, which are generally over furnished.

By products of fuel combustion are important in houses with indoor kitchens. It is not only the burning of dried dung and fuel wood which is responsible, but also kerosene and liquid petroleum gas. Oxides of both nitrogen and sulphur are released from their combustion.

Smoking of tobacco in the closed environment is an important source of indoor pollution. It may not be high quantitatively, but significantly hazardous for health. It is because of

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the fact that there are over 3,000 chemical constituents in tobacco smoke, which have been identified. These are harmful for human health.

Microorganisms and allergens are of special significance in the causation and spread of diseases, Most of the infective illnesses may involve more persons of a family living in common indoor environment. These include viral and bacterial diseases like tuberculosis.

Besides infections, allergic and hypersensitivity disorders are spreading fast. Although asthma is the most common form of respiratory allergic disorders, pneumonias are not uncommon, but more persistent and serious. These are attributed to exposures to allergens from various fungi, moulds, hay and other organic materials. Indoor air ventilation systems, coolers, air conditioners, dampness, decay, pet animals, production or handling of the causative items are responsible for these hypersensitivity diseases.

Obviously, the spectrum of pollution is very wide and our options are limited. Indoor pollution may be handled relatively easily by an individual. Moreover, the good work must start from one's own house.

(i) What is an air pollutant? ***(1 Mark)***

(ii) Why do we feel suffocated in a closed environment? ***(1 Mark)***

(iii) How the sick building syndrome can be characterized? ***(1 Mark)***

(iv) How is indoor smoking very hazardous? ***(1 Mark)***

(v) How can one overcome the dangers of indoor air pollution? ***(1 Mark)***

(b) Read the passage:

Effective speaking depends on effective listening. It takes energy to concentrate on hearing and to concentrate on understanding what has been heard. Incompetent listeners fail in a number of ways. First, they may drift. Their attention drifts from what the speaker is saying. Second, they may counter. They find counter-arguments to whatever a speaker may be saying. Third, they compete. Then, they filter. They exclude from their understanding those parts of the message which do not readily fit with their own frame of reference. Finally, they react. They let personal feelings about a speaker or subject override the significance of the message which is being sent.

What can a listener do to be more effective? The first key to effective listening is the art of concentration. If a listener positively wishes to concentrate on receiving a message his chances of success are high.

It may need determination. Some speakers are difficult to follow, either because of voice problems or because of the form in which they send a message. There is then a particular need for the determination of a listener to concentrate on what is being said.

Concentration is helped by alertness. Mental alertness is helped by physical alertness. It is not simply physical fitness, but also positioning of the body, the limbs and the head.

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Some people also find it helpful to their concentration if they hold the head slightly to one side. One useful way for achieving this is intensive note-taking, by trying to capture the critical headings and sub-headings the speaker is referring to.

Note-taking has been recommended as an aid to the listener. It also helps the speaker. It gives him confidence when he sees that listeners are sufficiently interested to take notes; the patterns of eye-contact when the note-taker looks up can be very positive; and the speaker's timing is aided-he can see when a note-taker is writing hard and can then make effective use of pauses.

Posture too is important. Consider the impact made by a less competent listener who pushes his chair backwards and slouches. An upright posture helps a listener's concentration. At the same time it is seen by the speaker to be a positive feature amongst his listeners. Effective listening skills have an impact on both the listener and the speaker.

(i) Make notes, using headings, sub-headings and abbreviation whenever necessary. ***(3 Marks)***

(ii) Write a summary. ***(2 Marks)***

Answer

(a) (i) An air pollutant is a substance which is present in air while normally it is not there or present in an amount exceeding the normal concentrations.

(ii) We feel suffocated in a closed environment due to the lack of oxygen.

(iii) The sick building syndrome can be characterized by a general feeling of malaise, headaches, dizziness and irritation of mucous membranes. It may also be accompanied by nausea, itching, aches, pains and depression.

(iv) Indoor smoking is very hazardous because over 3000 chemicals constituents are present in tobacco smoke, which are harmful for human health.

(v) Indoor pollution can be handled easily by an individual by starting the good work from one's own house. It can be avoided through well ventilated houses, not smoking tobacco inside the houses and not burning coal inside the closed rooms.

(b) **(i)** The Art of effective Listening

1. Eff. speaking depends on:

1.1 eff. Listening

1.2 concen. on listening

1.3 concen. on understanding what you hear

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2. Reasons why incompetent lstnr. fail :
   - 2.1 their attention drifts
   - 2.2 they find counter arguments
   - 2.3 they compete & then filter
   - 2.4 they react
3. Ways for a lstnr. to be more eff.:
   - 3.1 concen. on the msg. recd.
   - 3.2 determination
   - 3.3 phys. alertness-positioning body
   - 3.4 note-taking-aid
     - 3.4.1 helps spkr.
     - 3.4.2 gives him confidence
     - 3.4.3 encourages eye contact
4. Impact of posture
   - 4.1 helps lstnr. in concen.
   - 4.2 seen by spkr. as a +ve feature among his lstnr.

Key to Abbreviations

Eff.	effective
Lstnr	listener
Concen.	concentrating
Msg.	message
Recd.	received
Phys.	physical
+ve	positive
Spkr.	speaker

(ii) Summary:

Title: The Art of Effective Listening

Effective speaking and effective listening are two sides of the same coin, both are equally important. An incompetent listener will always fail as he drifts away from

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counters, competes and finally filters what the speakers is saying. In order to be a good listener, concentration is importantly combined with mental and physical alertness. The importance of other factors like note-taking and posture cannot be ignored. All these are vital for effective listening skills and are viewed as a positive feature by the speaker amongst his listeners. These skills have an impact not only on the listener but also on the speaker.

Question 8

(a) *Comment on following statement:*

"Communication does not simply involve sending of a message by a person." ***(2 Marks)***

(b) (i) *Choose the word which best expresses the meaning of the given word:*

ADAMANT

(1) *Willing*

(2) *Inflexible*

(3) *Poor*

(4) *Unfavourable* ***(1 Mark)***

(ii) *Fill in the blanks with the most suitable option:*

The study of coding-decoding involves various _____ clues.

(1) *Healthy*

(2) *Obvious*

(3) *Verbose*

(4) *Cryptic* ***(1 Mark)***

(iii) *Change the following sentence to indirect speech:*

He said, "I clean my teeth twice a day." ***(1 Mark)***

(c) *Write Precis and give appropriate title to the passage given below:*

Almost every organism has the tendency to react to certain stimuli for survival. This reaction to each and every situation has an evolutionary basis of adaptation. The study of human emotions dates back to the 19th century and psychologists have since then discovered many reasons for every emotion, yet these are just theories. The arousal of emotions and their assumed structures is said to occur due to repeated encounters with a situation followed by the adaptation of the encounter. Human emotions have been linked to adaptively regulate emotion gathering mechanisms. The emotion of fear which is associated with ancient parts of the brain has presumably evolved among our pre-mammal ancestors while the emotion of a mother's love called the 'filial emotion' has

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seen to evolve among early mammals. Various emotions work as manipulative strategies that favour survival. Feigning emotions by an accused person may help him be saved from the punishment. An exaggerated display of anger is also associated with manipulating or threatening someone.

Despite there being several emotions for various events, ironically the most interesting emotion is the emotion of disgust. Disgust is aroused when the body senses a danger to the immunity or the physiology of the human. The disgusted memory is associated with alerting the brain of a potentially dangerous substance. A few studies have shown that the encoding triggered in adaptive memory for problems is stronger than any other behaviour. This makes us instantly have a disgusted expression at the sight of something that makes us uncomfortable or uneasy. These expressions are also closely linked to self-protective communication. ***(5 Marks)***

Answer

(a) Communication does not simply involve sending of a message by a person rather it is a process of exchanging information, ideas, thoughts and emotions through speech, signal, writing or behaviour. For effective communication the sender is required to select the appropriate medium and mode of communication for sending the message. He/she must communicate his message in a manner which is understandable and acceptable by the receiver. This requires selection of appropriate language and suitable time for communication by the sender. Communication is supposed to be complete and effective only when the listener responds relevantly and appropriately.

(b) (i) (2) Inflexible

(ii) (4) cryptic

(iii) He said that he cleans his teeth twice a day.

(c) **précis**

Title: Human Evolution and Emotions

The emotions that humans express and how they react to stimuli in the environment has an evolutionary basis. Emotions are assumed to be a result of repeated encounters with a certain event. According to evolution, emotions like fear, love, feigning, anger, and disgust are results of consistent reactions in particular situations. Encoding triggered in adaptive memory for problems results in having a disgusted expression that makes us uncomfortable. Some expressions are often built up or adapted as a form of self-protection.

Question 9

(a) Concreteness is an important characteristic of effective communication. Comment.

(2 Marks)

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Or

What do you mean by Visual communication? ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

RELISH

(1) Like

(2) Abhore

(3) Hate

(4) Loathe ***(1 Mark)***

(ii) Choose the word which best expresses the meaning of the given word:

MESSY

(1) Organised

(2) Dirty

(3) Hygienic

(4) Clean ***(1 Mark)***

(iii) Change the following sentence into direct speech:

She said that she would buy a new house if she had been rich. ***(1 Mark)***

(c) Write a report in 250 words on the topic: "Climate Change". ***(5 Marks)***

Answer

(a) The content of one's communiqué should be tangible and based on data. Abstract ideas and thoughts are liable to misinterpretation. It should be made sure that there is just sufficient detail to support one's case /argument with focus to the main message.

OR

Visual communication through visual aids such as signs, typography, drawing, graphic design, illustration, colour and other electronic resources usually reinforces written communication altogether. Visual communication is a powerful medium, due to which the print and audio visual media makes effective use of visuals to convey their message. Visuals like graphs, pie charts and other diagrammatic presentations convey clearly and concisely a great deal of information. They are an essential part of official presentations these days.

(b) (i) (1) Like

(ii) (2) Dirty

(iii) She said, "I would buy a new house if I were rich,"

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(c) Climate Change

By—Raman Gupta

Climate change is basically a change in the pattern of the climate that lasts for a few decades to centuries. Various factors lead to the changes in the climate conditions on the earth. These factors are also referred to as forcing mechanisms. These mechanisms are either external or internal.

External forcing mechanisms can either be natural such as the variation in the earth's orbit, variation in solar radiation, volcanic eruptions, plate tectonics, etc. or can be caused due to human activities such as greenhouse gases, carbon emission, etc. Internal forcing mechanisms, on the other hand, are the natural processes that occur within the climate system. These include the ocean-atmosphere variability as well as the presence of life on the earth.

Human activities such as deforestation, use of land and use of methods that lead to the increase in carbon in the atmosphere have been a major cause of climate change in the recent past. It is important to keep a check on such activities in order to control climatic changes and ensure environmental harmony.

Climate change has a negative impact on the forests, wildlife, water systems as well as the polar region on the earth. A number of species of plants and animals have gone extinct due to the changes in the climate on the earth and several others have also been affected adversely.

As per researchers, human activities have contributed majorly to this change during the last few decades. In order to control climate change and maintain a healthy environment on the earth, human influences on the same need to be controlled.

Question 10

(a) *Define Wheel and Spoke Network in communication.* ***(2 Marks)***

(b) (i) *Change the sentence from Active to Passive Voice:*

Please help me. ***(1 Mark)***

(ii) *Change the sentence from Passive to Active Voice:*

Jobs will have been lost by thousands of individuals due to the pandemic. ***(1 Mark)***

(iii) *Change the following sentence to direct Speech:*

The teacher suggested the boys that they should go swimming since it was so warm. ***(1 Mark)***

(c) *You are Bhupendra, a resident of B-128 Rajeev Gandhi Nagar, New Delhi. You are worried about your younger brother's habit of excessive use of Internet for completing his homework. Write a letter to the Editor of a popular newspaper, expressing your opinion*

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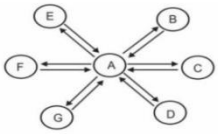
on the advantages, disadvantages of the dependence of youth for utilizing Internet as a homework tool in the present times. Also send it by email (assume emails of yourself and the receiver appropriately). ***(5 Marks)***

Answer

(a) **Wheel and Spoke Network**: There is a single controlling authority who gives instructions and orders to all employees working under him / her in this communication network. All employees get instructions directly from the leader and report back to him / her. It is direct and efficient for the small business / company, but inappropriate way of communication in a large organization with many people. A company with many employees needs more decision makers or nothing would get done.



Wheel and Spoke Network

(b) (i) You are requested to help me.

(ii) Thousands of individuals will have lost their jobs due to the pandemic.

(iii) The teacher said to the boys, "Since it is so warm let us go swimming."

(c) B-128, Rajeev Gandhi Nagar

New Delhi

(Email : bhupendra@gmail.com)

10 February, 2023

The Editor

The Hindustan Times

New Delhi

(Email: hindustantimes@yahoo.com)

Subject: Expressing concern over students' craze for using internet as homework tool.

Sir,

Through the columns of your esteemed newspaper, I wish to highlight the problem of growing dependence of the present generation on the internet as a homework tool.

In many ways, internet is a boon for the students. It is one of the quickest ways to find information on any topic. Students have access to a variety of sources to gather information on any topic. This enriches their knowledge and may expose them to

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additional valid information. Time required to get answers to queries is very less. Therefore, students have more time on hand to indulge in recreation activities.

However, it seems that internet has more disadvantages than advantages. There are chances that some websites may contain inaccurate and inappropriate information too. Besides reading habit of students, understanding skills are deteriorating as they just copy information. They display lack of interest in listening to the teacher in school. The concept of hard work seems to be disappearing amongst the youth of the present generation, which is a dangerous sign.

Excess of anything is bad. A balanced, sensible and guided use of internet is required so that our present generation enjoys the fruit of technology positively. I hope you will publish my views in public interest.

Bhupendura

A concerned citizen

(PS: Above communication has been also sent from my email: bhupendra@gmail.com to you at hindustantimes@yahoo.com)

Question 11

(a) How 'Emotions' of a person become barrier of communication? ***(2 Marks)***

(b) Select the correct meaning of Idioms/ Phrases given below:

(i) Bone of contention

(1) To be cautious

(2) Subject of dispute

(3) Area of agreement

(4) Of least importance ***(1 Mark)***

(ii) Face the music

(1) To anticipate good response of something you have done

(2) To accept award for something you have done

(3) To accept criticism for something you have done

(4) To wait for result of something you have done ***(1 Mark)***

(iii) Correct the following sentence:

I cannot explain that why I like her so much. ***(1 Mark)***

(c) You are Karunesh Vijay, a resident of 123 Mahaveer Nagar, Indore, Madhya Pradesh. You came across a notice on the website of a. CA Firm 'Saha and Company' posted on

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24 February, 2023, for the recruitment of an Article Assistant. Prepare a resume along with a cover letter in response to this notice. ***(5 Marks)***

Answer

(a) **Emotional barrier in Communication:** Emotions play a very vital role in our life. Both encoding and decoding of message are influenced by our emotions. A message received when we are emotionally charged up will have a different meaning for us than when we are calm and composed. It is one of the chief barriers to open and free communications. A person who is upset and disturbed cannot pass on or receive information appropriately and objectively.

(b) (i) (2) Subject of dispute

(ii) (3) To accept criticism for something you have done.

(iii) I cannot/can't explain why I like her so much.

(c) **Cover Letter**

Karunesh Vijay

123 Mahaveer Nagar, Indore,

Madhya Pradesh

Phone Number: +91 9910838521

Email. Id: kv99@gmail.com

Date: 28-02-2023

To

The Managing Partner,

Shah & Company

Connaught Place,

New Delhi.

Subject: Application for the position of an Article Assistant

Dear Sir,

This is with reference to the notice posted on your website dated 24-02-2023 for requirement of Article Assistants. I wish to apply for the same. As regards my qualification, I am enclosing my resume to enable you to assess my suitability for the same. If given an opportunity, I will prove to deliver my duties to the best of my abilities.

I will be readily available for personal interaction any time at your convenience in case my candidature is considered for the aforesaid post.

Looking forward for a favorable reply,

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Thanking you,

Yours sincerely

Karunesh Vijay.

Enclosures:

"Resume"

For the position of an Article Assistant

Name:	Karunesh Vijay
Father's name:	Dr. Mohan Lal Vijay
Permanent Address:	123, Mahaveer Nagar, Indore, Madhya Pradesh
Contact:	Phone Number: +91 9910838521 Email. Id: kv99@gmail.com
Date of Birth:	01-02-2002
Nationality:	Indian

Qualification:

S. No	Qualification	Institution	Board/ University	Year of Passing	Percentage/ Division
1.	Class X	Delphi Public School, Indore, Madhya Pradesh	CBSE	2017	84.5
2.	Class XII	Delphi Public School, Indore, Madhya Pradesh	CBSE	2019	87.5
3.	CA Foundation	ICAI	ICAI	2020	73.00
4.	CA Intermediate	ICAI	ICAI	2022	72.59

Technical Skill:

Very well versed with MS- Excel

Can work in all versions of tally

Good analytical Skill

Good communication and Interpersonal Skill

Training:

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1. Information Technology Training: Completed ITT (100 hours) conducted by ICAI in virtual mode
2. Orientation program: Completed OP (100 hours) conducted by ICAI in virtual mode

Languages known: English/ Hindi

I declare that the details mentioned are true to the best of my knowledge and belief.

Date: 28-02-2023 (Karunesh Vijay)

Place: Indore, MP

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DEC 2023

PAPER – 2: BUSINESS LAWS & BUSINESS CORRESPONDENCE AND REPORTING

SECTION A – BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) *T owes G, the following debts as per the table given below:*

Amount of the Debt (in ₹)	*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 ₹ 12,500

(ii) A cheque of ₹ 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. ***(4 Marks)***

(b) *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 ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5 crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 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?* ***(4 Marks)***

(c) *Discuss the various types of implied warranties as per the Sale of Goods Act, 1930.*

(4 Marks)

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Answer

(a) 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 ₹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 ₹ 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 ₹ 12,500 will be appropriated against the debt of ₹ 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 ₹ 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, ₹2,500 will be appropriated for the first debt and ₹ 1,500 will be appropriated towards the second debt.

(b) According to 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.

As per Section 2(87) of the Companies Act, 2013, "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

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(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

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.

(c) Various types of implied warranties are covered under Sections 14 and 16 of the Sale of Goods Act, 1930 which are as follows:

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 or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Question 2

(a) *Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872.* ***(7 Marks)***

(b) *Explain the provisions relating to the registration of changes in partners under the Limited Liability Partnership Act, 2008.* ***(5 Marks)***

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Answer

(a) **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.

(b) **Registration of changes in partners (Section 25 of the Limited Liability Partnership Act, 2008):**

(1) Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.

(2) A LLP shall—

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.

(3) A notice filed with the Registrar under sub-section (2)—

(a) shall be in such form and accompanied by such fees as may be prescribed;

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(b) shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and

(c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

(4) If the LLP contravenes the provisions of sub-section (2) as regards intimation to the Registrar, the LLP and its every designated partner shall be liable to a penalty of ₹ 10,000.

(5) If the contravention referred to in sub-section (1) is made by any partner of the LLP, such partner shall be liable to a penalty of ₹ 10,000.

(6) Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.

However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

Question 3

(a) Discuss the rule regarding a partner's implied authority to bind the firm for his acts. Also, explain the situations when the partner has no implied authority to bind the firm.

(6 Marks)

(b) (i) A mobile phone was displayed in a shop with a price tag of ₹10,000 attached to the mobile display box. As the price displayed was very less as compared to M.R.P. of the mobile phone, Y, a customer rushed to the cash counter and asked the shopkeeper to receive the payment and pack up the mobile phone. The shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone. Y seeks your advice whether he can sue to shopkeeper for the above cause under the Indian Contract Act, 1872. ***(3 Marks)***

(ii) On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @ ₹900; 'M'@ 1,000 and 'L' @ 1,100 per piece have to be supplied on or before 31st May, 2023.

However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the

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above rate due to the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ₹ 1,000; ₹1,100; and ₹ 1,200 for 'S', 'M' and 'L' sizes respectively.

Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872. ***(3 Marks)***

Answer

(a) As per the provisions of Sections 19(1) read with the provisions of Section 22 of the Indian Partnership Act, 1932, which deal with the implied authority of a partner, provide that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority.

As per the provisions of Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

As per the provisions of Section 21 of the Indian Partnership Act, 1932, a partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

As per the provisions of sub-section (2) of Section 19 the Indian Partnership Act, 1932, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) **Submit a dispute** relating to the business of the firm to arbitration;

(b) **open a banking account** on behalf of the firm in his own name;

(c) **compromise or relinquish** any claim or portion of a claim by the firm;

(d) **withdraw** a suit or proceedings filed on behalf of the firm;

(e) **admit any liability** in a suit or proceedings against the firm;

(f) **acquire immovable property** on behalf of the firm;

(g) **transfer immovable property** belonging to the firm; and

(h) **enter into partnership** on behalf of the firm.

(b) (i) An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer.

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Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Y reaches to shop and selects a Mobile Phone with a price tag of ₹ 10,000 but the shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone.

On the basis of above provisions and facts, the price tag with the Mobile Phone was not offer. It is merely an invitation to offer. Hence, it is Y who is making the offer and not the shopkeeper. Shopkeeper has the right to reject Y's offer. Therefore, Y cannot sue the shopkeeper for the above cause.

(ii) As per the provisions of Section 39 of the Indian Contract Act, 1872, 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.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

(i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or

(ii) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

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

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ₹ 90,000 [300 piece @ ₹ 100 (Small), 300 piece @ ₹ 100 (Medium) and 300 piece @ ₹ 100 (Large)].

Question 4

(a) Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930? ***(6 Marks)***

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(b) Sate giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act,1932.

(i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership? ***(2 Marks)***

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is liable to a paper dealer for paper supplied to X to print Y's book? ***(2 Marks)***

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? ***(2 Marks)***

Answer

(a) Seller's lien (Section 47 of the Sale of Goods Act, 1930): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

(a) where the goods have been sold without any stipulation as to credit;

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

(c) where the buyer becomes insolvent.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he in possession of the goods as agent or bailee for the buyer.

As per the provisions of Section 48, where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. [Sub-section (2)]

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

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Yes, it is a case of partnership.

Reason: The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

(ii) No, it is not a case of partnership

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

(iii) No, it is not a case of partnership

Reason: Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because, neither there is existence of business, nor mutual agency is there.

Question 5

(a) (i) 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. ***(4 Marks)***

(ii) Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ ₹100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale.

Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930?

(2 Marks)

(b) Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital. ***(6 Marks)***

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Answer

(a) (i) 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.

(ii) According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

Important Note: The answer can also be given as per Section 34 of the Sale of Goods Act, 1930, which provides that 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.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

(b) **Kinds of share capital:** Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the said provision, the share capital of a company limited by shares shall be of two kinds, namely:—

1. **"Equity share capital",** with reference to any company limited by shares, means all share capital which is not preference share capital;

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Equity share capital— can be

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;

2. **"Preference share capital",** with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) **payment of dividend,** either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) **repayment,** in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, despite that it is entitled to either or both of the following rights, namely:—

(a) that in **respect of dividends**, in addition to the preferential rights to the amounts specified as above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in **respect of capital**, in addition to the preferential right to the repayment, on a winding up, of the amounts specified above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Question 6

(a) "Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872. ***(5 Marks)***

(b) State the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the Indian Partnership Act, 1932? ***(4 Marks)***

(c) 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. ***(3 Marks)***

Answer

(a) Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

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It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

(i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

(ii) Where the silence is, in itself, equivalent to speech.

(b) Mode of Settlement of partnership accounts (Section 48 of the Indian Partnership Act, 1932): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

(i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

(c) "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;

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(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.

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SECTION-B : BUSINESS CORRESPONDENCE AND REPORTING

*Question No. **7** is compulsory.*

*Answer any **three** questions from the remaining **four** questions.*

All candidates (including those who have opted for Hindi Medium) are required to answer the questions in Section B, in English only.

Question 7

(a) *Read the passage carefully and answer the questions given below:*

There are several indicators of a developed nation. It is economically, agriculturally and technologically advanced. There is all round prosperity. The benefits of prosperity reach the common people. They have a reasonable life span and enjoy the basic comforts and good health. They are able to educate and feed their children well. Poverty, illiteracy, ignorance, disease and inequalities are reduced to a minimum. Quality goods are produced in abundance and exports keep on rising. The nation is able to protect its sovereignty as it is self -reliant in defence and has a standing in the international forum. India, even after more than seventy – six years since independence is branded as a developing country. Achieving a developed status means the major transformation of our national economy to make it one of the largest economy of the world, where people live well and above the poverty line. The transformation can be materialised within the next 15 to 20 years as India has the necessary potential. Our natural resources are richer as compared to those of many other countries. We have abundant supplies of all the ores and minerals. We have rich bio-diversity, abundant sunshine, varied agro-climatic conditions and plenty of rainfall all over India. The country either already has the necessary technologies or can develop them easily. Our people and our farmers not only have a great learning capability but most of them also have an entrepreneurial and competitive spirit. Avenues to channelize this spirit constructively and productively are required. We need the will to take action and commit ourselves to be one of the world leaders. We must resolve to work hard with a long-term vision. Technology is the highest wealth generator in the shortest possible time. It can provide us with infrastructure and help transform education and training, food and processing, industries and agriculture. It is the key to achieving quality products in an increasingly competitive market and to continually upgrading human skills. It is the only vital input for ensuring health security and better living conditions for people. It can enable us to double cereals by 2030 and to make arrangements for their storage, transportation, distribution and marketing. It can make us leaders in machine tool industries. Through software engineering, we can enter computer- aided design and computer aided manufacturing. Therefore, the major role in India's development is to be played by the vast pool of our talented scientists, researchers and technologists. They should shed pessimism and think big because they are the only ones who understand the forces of technological modernization. They should take it as a challenge to make India a developed country. They must spearhead the

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movement by talking about what can be done and encouraging people that difficulties can be overcome. They must extend all possible help to industries, business managers, administrators, and others.

(i) Mention the basic fields in which a developed country is advanced. ***(1 Mark)***

(ii) What is required for achieving the developed status for India? ***(1 Mark)***

(iii) "Technology is the highest wealth generator in the shortest time". How? ***(1 Mark)***

(iv) Who can play a major role in India's development? ***(1 Mark)***

(v) How can India enter computer–aided design and manufacturing? ***(1 Mark)***

(b) Read the passage:

How does television affect our lives? It can be very helpful to people who carefully choose the shows that they watch. Television can increase our knowledge of the outside world; there are high quality programmes that help us understand many fields of study, science, medicine, and the arts and so on. Moreover, television benefits very old people who can't often leave the house, as well as patients in hospital. It also offers non-native speakers the advantage of daily informal language practice. They can increase their vocabulary and practice listening.

On the other hand, there are several serious disadvantages to television. Of course, it provides us with a pleasant way to relax and spend our free time, but in some countries, people watch the 'boob-tube' for an average of six hours or more a day. Many children stare at a television screen for more hours each day they do anything else, including studying and sleeping. It's clear that the tube has a powerful influence on their lives and that its influence is often negative.

Recent studies show that after only thirty seconds of watching television, a person's brain 'relaxes' the same way that it does just before the person falls asleep. Another effect of television on the human brain is that it seems to cause poor concentration. Children who view a lot of television can often concentrate on a subject for only fifteen to twenty minutes. They can pay attention only for the amount of time between commercials.

Another disadvantage is that television often causes people to become dissatisfied with their own lives. Real life does not seem as exciting to these people as the lives of actors on the screen. To many people, television becomes more real than reality and their own lives boring. Also many people get upset or depressed when they can't solve problems in real life as quickly as televisions actors seem to.

Before a child is fourteen years old, he or she views eleven thousand murders on the tube. He or she begins to believe that there is nothing strange about fights, killings and other kings of violence. Many studies show that people become more violent after certain programmes. They may even do the things that they saw in a violent show.

(i) Make notes, using headings, sub-headings and abbreviation whenever necessary.

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(3 Marks)

(ii) *Write a summary giving a suitable title.* *(2 Marks)*

Answer

(a) 1. A developed country is economically, agriculturally and technologically advanced.

2. Major transformation of our national economy to make it one of the largest economies of the world is required for achieving a developed status for India.

Alternative Solution: Major transformation of our national economy to make it one of the largest economies of the world is required for achieving a developed status for India, where people live well and above the poverty line.

Alternative Solution: To achieve the developed status for India, a major transformation of our national economy should take place to make it one of the largest economies of the world, where people live well and above the poverty line.

3. It can provide us with infrastructure and help to transform education and training, food and processing, industries and agriculture.

4. Vast pool of talented scientists, researchers and technologists can play a major role in India's development.

5. Through software engineering, India can enter computer-aided design and manufacturing.

(b) (i) Note Making:

1. Benefits of T.V.
   - 1.1 Inc. our know. of o/s world
   - 1.2 High qty. prog
     - 1.2.1 Fields – science, medicine, arts
   - 1.3 Old people – can't leave house, patients – hospitalised.
   - 1.4 Non-native speakers – daily informal lang. Prac.
   - 1.5 Inc. vocabulary, listening
   - 1.6 Way to Relax
2. Disadvantages of T.V./Boob-Tube on body
   - 2.1 Long Duration of viewing – affects eyes
   - 2.2 Human brain
     - 2.2.1. gets drained
     - 2.2.2. poor concentration

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2.3 Effects of violent shows on adults/behaviour

3. Effects of T.V. on children

3.1 Lack of concentration in studies

3.2. gets used to violence

3.3. Loses discretion/understanding

4. Other effects

4.1 People become dissatisfied

4.2 Unable to diff. b/w reel and real life

4.3 Real life seems boring

4.4 Imitate actors

4.5 get upset/depressed – unable to solve problems

Key Abbreviations:

1. Inc. – increases
2. o/s – outside
3. qty – quality
4. prog - programme
5. know – knowledge
6. lang. – language
7. prac. – practice
8. T.V. – television
9. difft. – differentiate
10. b/w – between

(ii) The impact of Television

Summary: Watching television increases knowledge of the outside world, science, medicine and different arts. It helps old people and patients to recreate. It assists in informal language, practice, improving vocabulary and practice listening. However, watching television for more than six hours a day and continuously staring at screens has a negative influence on students. It affects the human brain and leads to poor concentration. Life becomes boring as television seems more real than reality. People can feel depressed when they are unable to solve problems as quickly as actors do. Television normalizes violence which can make children violent.

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Question 8

(a) *What do you mean by verbal communication?* ***(2 Marks)***

(b) (i) *Select the suitable antonym for the word given under:*

TYRANNY

(1) *Hatred*

(2) *Mystery*

(3) *Autonomy*

(4) *Oppression* ***(1 Mark)***

(ii) *Correct the following sentence:*

If he came to me, I would have given him a pen. ***(1 Mark)***

(iii) *Root of the word 'Anthropology' is:*

(1) *Study*

(2) *Anthrop*

(3) *Mankind*

(4) *Man* ***(1 Mark)***

(c) *Write a precis and give appropriate title to the passage given below:*

English education and English language have done immense goods to India, in spite of their glaring drawbacks. The notions of democracy and self-government are the boon of English education. Those who fought and died for mother India's freedom were nursed in the cradle of English thought and culture. The West has made contribution to the East. The history of Europe has fired the hearts of our leaders. Our struggle for freedom has been inspired by the struggles for freedom in England America and France. If our leaders were ignorant of English and if they had not studied this language, how could they have been inspired by these heroic struggles for freedom in other lands? English, therefore, did us great good in the past and if properly studies will do immense good in future.

English is spoken throughout the world. For international contact, our commerce and trade, for the development of our practical ideas, for the scientific studies, English is indispensable "English is very rich in literature," our own literature has been made richer by this foreign language. It will really be a fatal day if we altogether forget Shakespeare, Milton, Keates and Shaw. ***(5 Marks)***

Answer

(a) Verbal communication: It involves the use of words and languages in delivering the intended message. Though 'verbal' primarily refers to communication through the spoken

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medium, while categorizing types of verbal communication, the written and oral forms of communication are both included. Verbal communication is the easiest, fastest, and the most successful form of communication.

(b) **(i)** (3) Autonomy

(ii) If he came to me, I would give him a pen.

Alternate Solution: If he had come to me, I would have given him a pen.

(iii) (2) Anthrop

(c) **Precis:**

Importance of English in India's independence and development

Despite of various drawbacks, English education has done great good to India. The ideas of democracy and self-government are its gifts. Nursed in English education, the Indian leaders were inspired by the Western thought, culture and freedom struggles. They fought for and won their motherland's freedom. Being spoken throughout the world, english is necessary for international contact, trade, commerce and science. English is rich in literature; its masterminds cannot be neglected.

Alternative:

Importance of English in India's independence and development

Despite its numerous shortcomings, English education has contributed significantly to India. Among its invaluable gifts are the ideals of democracy and self-government. Leaders nurtured in English education played vital role in the attainment of India's independence since they were inspired by Western thought, culture, and freedom struggles. Given its global prevalence, English serves as an essential medium for international communication, trade, commerce, and science.

Question 9

(a) What do you mean by Star Network Communication? ***(2 Marks)***

OR

"Coherence" is an important feature of Communication. Discuss. ***(2 Marks)***

(b) (i) Choose the word which best expresses the meaning of the given word:

FERRY

(1) Bargain

(2) Celebrate

(3) Transport

(4) Drown ***(1 Mark)***

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(ii) Change the following sentence to indirect speech:

My friend said to me, "Has your father returned from Kolkata"? ***(1 Mark)***

(iii) Change the following sentence into Passive Voice:

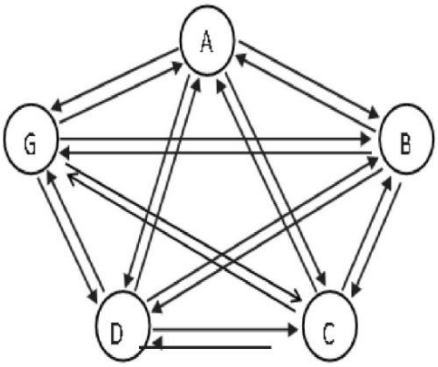
"Please sit here and wait till return". ***(1 Mark)***

(c) Prepare the Minutes of a Meeting, presided by a committee under the chairmanship of the Managing Director Ms. U; Product Head and Sales Head of LHO Private Limited, a Garment Company. The main agenda of the meeting was introducing a new Denim Jeans, analysing the cost, discussing the sales and marketing strategies. ***(5 Marks)***

Answer

(a) Star Network: Star network communication has multiple channels of communication open between all members. This network propagates group communication, and is essential where teamwork is involved. The members communicate and exchange information with each other freely and without hindrance or hesitation.

The usefulness of all networks depends on the structure and size of the company and the manner of communication between the employees. Good communication relies on the sincerity of the employees within the company as well as properly defined processes in the organisation. These parameters help the organisation to achieve its objectives.



OR

Coherence: Coherence in writing and speech refers to the logical bridge between words, sentences, and paragraphs. Main ideas and meaning can be difficult for the reader to follow if the writer jumps from one idea to another and use contradictory words to express himself/herself. The key to coherence is sequentially organised and logically

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presented information, which is easily understood. All content under the topic should be relevant, interconnected and present information in a flow.

(b) **(i)** (3) Transport

(ii) My friend asked / enquired me if my father had returned from Kolkata.

Alternative Solution: My friend asked me whether my father had returned from Kolkata.

(iii) You are requested to sit here and wait here till I return.

Alternative Solution: You are requested to sit here and wait till I return.

Alternative Solution: You are requested to sit here and wait until I return.

(c) **Minutes of Meeting:**

Meeting - Launching of New Product-Denim Jeans

Date: xx/xx/xxxx

Meeting Time- 3.00 P.M.

Location: Conference Room, Head office of LHO Private Limited

Attendance: Managing Director Ms. U, the Product Head, the Sales Head

Agenda: Discussion on introducing new product range, analysing cost, sales and Marketing strategies.

Ms. U the Managing Director, gave an introduction about the new product range - **Denim jeans.**

The Product Head spoke about the new product, its quality, how it is superior to others in the segment available with other brands in market.

The Sales Head gave a detailed analysis of cost, fixed and variable overheads, other expenditure related to market the product and development strategy in collaboration with the sales team.

All the attendees approved the plan and appreciated it

Madam Managing Director declared an open house for participants to put up their concerns, and finally gave vote of thanks.

Conclusion: Proposal for launching the new Product Denim Jeans approved.

Question 10

(a) How does organization structure become a barrier to communication? Explain. ***(2 Marks)***

(b) (i) Change the sentences from Active to Passive Voice:

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They forced him to steal the money out of his dad's room. ***(1 Mark)***

(ii) Change the sentence form Passive to Active Voice

Let the class not be disturbed. ***(1 Mark)***

(iii) Change the following sentence into direct speech.

The boys exclaimed with joy that they had won the match. ***(1 Mark)***

(c) You are a Finance Manager of XYZ Limited, A to Z Complex, Technology Nager, FF State, India (e-mail: atz@gmail.com, Tel.: XXXXX). Your company is going to distribute 500 laptops to a research institute under its Corporate Social Responsibility (CSR), initiatives. Write an enquiry letter to Z Tech Limited, NK Complex, FF State, India for supply of 500 Laptops making comprehensive enquiry about configuration, costs, delivery and terms and conditions etc. ***(5 Marks)***

Answer

(a) Organizational structure barriers:

Communication problems occur when the systems, structures and processes in the organization are not clear or have gaps in them. If the chain of command is unclear, a person may not know whom to contact for a particular issue. Inappropriate information transmission systems, lack of supervision, and unclear role and responsibility demarcations lead to confusion and inefficiency.

(b) (i) He was forced by them to steal the money out of his dad's room.

Alternative Solution: He was forced to steal the money out of his dad's room.

Alternative Solution: He was forced to steal the money from his dad's room by them.

Alternative Solution: He was forced to steal the money out of his dad's room by them.

(ii) Do not disturb the class.

Alternative Solution: Don't disturb the class.

(iii) The boys said, "Hurrah! We have won the match"!

Alternative Solution: The boys exclaimed/shouted/rejoiced, "We have won the match"!

Alternative Solution: The boys cried out with joy "We have won the match"!

Alternative Solution: The boys said "We are so happy to have won the match"!

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(c) XYZ Limited

A to Z Complex, Technology Nagar: FF State, India

E-mail: aaaaa@tmail.com. Tel.: xxxxxxxxxx

Date: 2nd January, 2024

To

The Marketing Manager,

Z Tech Limited,

NK Complex, FF State, India

Dear Sir,

Subject: Enquiry for Laptops

We are a leading firm engaged in manufacturing and marketing of hi-tech solar panels in the country. As part of our Corporate Social Responsibility (CSR), we intend to donate laptops to a research institute engaged in further development of technology in the area storage of solar energy for its further use. Since your organisation is one of the leading manufacturers of Computers and Laptop, kindly send us the latest catalogue covering various models with the optimised rates indicating the configurations, costs, delivery terms & conditions etc. Please also mention the discount that you can offer as we are in the process of purchasing around 500 Laptops.

You may reply by e-mail in the next four working days to the undersigned. We look forward to hear from you.

Regards,

ABC

(Finance Manager)

XYZ Limited

Mob: XXXXXXXXXX

Email- atz@gmail.com

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Question 11

(a) What is Para language in communication? Explain it. ***(2 Marks)***

(b) Select the correct meaning of Idioms / Phrases given below:

(i) 'Gift of the gab'

(1) Talent for speaking

(2) To win a prize

(3) To get some thing free

(4) To distribute gifts ***(1 Mark)***

(ii) A red -letter day

(1) An important day

(2) An auspicious day

(3) A dangerous day

(4) An unimportant day ***(1 Mark)***

(iii) Select the correct meaning of the collocations given below:

Dollar diplomacy

(1) Make money

(2) Go bankrupt

(3) Profit earnings

(4) Cash Flow ***(1 Mark)***

(c) The number of women in the police force seems insufficient especially when we see the increasing involvement of woman in terrorist activities. Write an article in 250 words for "The Hindustan Chronicle" on the need of having more women in the police force.

(5 Marks)

Answer

(a) **Paralanguage**: The way one says something, more than the actual words used, reveal the intent of the message. The voice quality, intonation, pitch, stress, tone and style of speaking, communicates approval, interest or lack of it.

(b) **(i)** (1) Talent for speaking

(ii) (1) An important day

(iii) (2) Go bankrupt

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(c) Article Writing

Need of having more Women in the Police Force

OR

Need of Women in Police Force

-By XYZ

Women empowerment and participation has seen a radical improvement in the recent few decades. Women are no longer confined to their homes and have come forward to excel in almost all fields, at par with men. However, it has been observed that the number of women in the police force seems insufficient, especially when we compare to their increasing number in terrorist activities. Women have proved their worth in the police force as they are more committed to the cause they work for and are less corrupt.

The Government needs to increase the reserved quota for the recruitment of women in the police force. Women should be given incentives to join the police force, and this will prove favourable as they bring with them a distinctly different skill set that is bound to change the way the police is perceived in our community. As the job description of the police expands beyond crime-fighting into community service, the presence of more women in the police force will surely help to enhance the image of the police officers, improve community relations and foster a more flexible and less violent approach for maintaining law and order. Their number is abysmally low in the police forces in spite of women being the major portion of our workforce. To combat this situation, we need more women in the police force. They would play a critical role in addressing gender-based violence. It affects women as well as children sometimes, as they do not feel free to open up in front of male police officers. Therefore, the women force is required to understand the grievances of the victims and the security challenges faced by women.

Generally, men are recruited in large numbers in police force. At the same time, it is important that the recruitment of women in the police forces should take place more actively. Despite the hidden barriers, women should be given chance to enter the force with appropriate training.

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JUNE 2024

PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Working notes should form part of the answers

Question 1

(a) *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? ***(7 Marks)***

(b) *A company, ABC limited as on 31.03.2023 had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ₹ 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.*

Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited.

State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013. ***(7 Marks)***

(c) *The Indian Partnership Act does not make the registration of firms compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Still, there are come cases where non-registration of firm does not affect certain rights. Explain with reference to the provisions of the Indian Partnership Act, 1932.* ***(6 Marks)***

Answer

(a) 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 ₹ 30,000 to R. [54,000-(4x6,000)]

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.

(b) As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post-issue, the total paid-up capital of ABC Limited is ₹ 2 lakhs (20,000 equity shares of ₹10 each).

Out of these, 5,000 shares were issued to XYZ Private Limited. Since XYZ Private Limited holds only 25% of the shares in ABC Limited, it does not have control of more than one-half of the total voting power of ABC Limited. Hence, XYZ Private Limited cannot be considered as a subsidiary company of ABC Limited in terms of the second criteria stated above, that of controlling of voting power.

XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors. But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors.

As per section 2(6) of the Act, Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company.

Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited.

(c) The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

Exceptions: Non-registration of a firm does not, however affect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Question 2

(a) *Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain-*

(i) *Can Priya take-back the vehicle from Sony?*

(ii) *Will your answer be different, if Priya had not handed over the vehicle to Sony?* ***(7 Marks)***

(b) *Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company?*

(7 Marks)

(c) *A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.*

(i) *Body Corporate*

(ii) *Mutual Agency*

(iii) *Foreign LLPs*

(iv) *Artificial legal person* ***(6 Marks)***

Answer

(a) Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

(1) fixed by the contract, or

(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or

(3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided.

   However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.

2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

   (i) In the instant case, Priya handed over the keys of her two-wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.

   (ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

(b) (a) Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) – salient features

- Only one person as member.
- Minimum paid up capital – no limit prescribed.

- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.
  - shall be eligible to incorporate an OPC;
  - shall be a nominee for the sole member of an OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.
- If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine

which may extend to one thousand rupees for every day after the first during which such contravention continues.

Here the member can be the sole member-cum-director.

(c) **Body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

Question 3

(a) (i) 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? ***(4 Marks)***

(ii) *A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C.* ***(3 Marks)***

(b) (i) *XYZ is a company incorporated under the Companies Act, 2013.*

The paid up share capital of the company is held by others as on 31.03.2024 in as under:

(1)	*Government of India*	*20%*
(2)	*Life Insurance Corporation of India (Public Institution)*	*8%*
(3)	*Government of Tamil Nadu*	*10%*
(4)	*Government of Rajasthan*	*10%*
(5)	*ABC Limited (owned by Government Company)*	*15%*

As per above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013.

(4 Marks)

(ii) *M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died?* ***(3 Marks)***

(c) *Explain in brief with reference to the provisions of the Indian Contract Act, 1872, what are the rights enjoyed by Surety against the Creditor, the Principal Debtor and Co-Sureties?* ***(6 Marks)***

Answer

(a) (i) 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 partners. '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.

(ii) According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.

As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:

(a) in the ordinary course of the business of the firm, or

(b) with the authority of the partners.

Section 27 provides that the firm is liable if a partner, acting within the scope of his apparent authority, receives money or property from a third party and misapplies it, or if the firm in the course of its business receives money or property and the same is misapplied while it is in the custody of the firm.

In the instant case, both A and B are liable to C for the wrongful acts committed by B. A cannot avoid liability merely on the grounds of being a sleeping partner.

(b) (i) Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not less than 51% of the paid-up share capital is held by:

- The Central Government, or
- Any State Government or Governments, or
- Partly by the Central Government and partly by one or more State Governments,

And includes a company which is a subsidiary company of such a Government company.

In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%

The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%.

Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013.

(ii) **One of the features of a company is that it has perpetual succession.** As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not

affected, since the shares held by M and N will be legally transmitted to their legal heirs.

(c) In terms of the provisions of the Indian Contract Act, 1872, the surety enjoys the following rights:

(a) Rights against the creditor;

(b) Rights against the principal debtor;

(c) Rights against co-sureties.

Right against the Creditor

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

(b) Right to set off: If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.

(c) Right to share reduction: The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

(a) Rights of subrogation [Section 140 of the Indian Contract Act, 1872]: Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

(b) Implied promise to indemnify surety [Section 145]: In every contract of guarantee there is an implied promise by the principal

debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

Rights against co-sureties

"Co-sureties (meaning)- When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties"

(a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

(b) **Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Question 4

(a) (i) Mr. J entered into an agreement with Mr. S to purchase his house for ₹ 20 lakh, within three months. He also paid ₹ 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid.

(4 Marks)

(ii) Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ₹ 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

(1) Whether sale of laptops after revoking Shyam's authority is binding on Rama?

(2) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission? ***(3 Marks)***

(b) 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? ***(7 Marks)***

(c) Describe in brief about the following Regulatory bodies of the Government of India: -

(i) Securities and Exchange Board of India

(ii) Reserve Bank of India

(iii) Insolvency and Bankruptcy Board of India ***(6 Marks)***

Answer

(a) (i) According to section 56 of the Indian Contract Act, 1872, an agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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

In the instant case, Mr. J entered into a contract with Mr. S to purchase his house for ₹ 20 lakh, with a token payment of ₹ 50,000. The agreement included a condition that the sale would be completed within three months. Before the completion of the sale, the house was demolished by the local administration. This event made it impossible for Mr. S to sell the house to Mr. J as agreed.

In this situation, Mr. J is required to refund ₹ 50,000 token money paid to Mr. S, as the contract to sell the house has become void due to the demolition of the house by the local administration, as a result of which it becomes impossible to sell the house on the part of S.

(ii) **When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]:** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

In the instant case,

(1) The revocation of Shyam's authority becomes effective only when it is communicated to and received by Shyam. Since Shyam had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rama was still valid. Hence, the sale of laptops conducted by Shyam is binding on Rama.

(2) Shyam is entitled to receive his commission for the sales made while he still had the authority to sell. Since he sold the laptops before receiving the revocation, he is entitled to his commission as per the initial agreement with Rama.

Amount of Commission: Shyam sold 5 laptops at the price fixed by Rama, which is ₹1 lakh each. The total sales amount to ₹5 lakh. The agreed commission rate is 11% i.e. ₹ 55,000.

(b) 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.

(c) (i) The Securities and Exchange Board of India (SEBI):

- It is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

(ii) Reserve Bank of India (RBI):

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.

- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(iii) Insolvency and Bankruptcy Board of India (IBBI)-

- It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

Question 5

(a) *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	*₹ 5.70 lakh*
Mr. Raj	*₹ 4.85 lakh*
Mr. Dev	*₹ 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	*₹ 15 lakh*
Mr. Madhu (on behalf of R N & Associates)	*₹ 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? ***(7 Marks)***

(b) "Dissolution of partnership doesn't mean dissolution of firm". Do you agree with this statement? State any three situations where court can dissolve the partnership firm. ***(7 Marks)***

(c) Where a party to a contract refuses altogether to perform, or is disabled from performing his part of it, the other party has a right to rescind it. Discuss this statement and the effects of such refusal under the provisions of The Indian Contract Act, 1872. ***(6 Marks)***

Answer

(a) 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.

(b) Dissolution of partnership doesn't mean dissolution of firm. According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Thus, the dissolution of firm means the discontinuation of the legal relation, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, the relationship between such a partner and other is dissolved, but the rest may decide to continue.

In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Important note: Different mode of presentation to an answer

Dissolution of partnership doesn't mean dissolution of firm. This statement can be proved with the help of some points of distinction between both of them, which are as follows:

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	**Continuation of business**	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	**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.
3.	**Order of court**	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	**Scope**	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	**Final closure of books**	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

Dissolution By the Court (Section 44 of the Indian Partnership Act, 1932):

Court may, at the suit of the partner, dissolve a firm on any of the following grounds:

(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 due by the partner, 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.

(c) An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Anticipatory breach of a contract may take either of the following two ways:

(a) Expressly by words spoken or written, and

(b) Impliedly by the conduct of one of the parties.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows:

"When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

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

(1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance;

or

(2) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Question 6

(a) Mr. Y issued a cheque for ₹ 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

(i) Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?

(ii) What would be your answer if Y issued a cheque as a donation to Mr. Z? ***(7 Marks)***

(b) 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.

OR

(b) What is the meaning of contingent contract? Write briefly its essentials. Also, explain any three rules relating to enforcement of a contingent contract. ***(6 Marks)***

(c) 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, ***(7 Marks)***

Answer

(a) Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
  - amount of money standing to the credit of that account is insufficient to honour the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, 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.

In the instant case,

(i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 20,000, or with both.

(ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

(b) 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.

OR

(b) Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872)

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

Rules Relating to Enforcement of a contingent contract:

The rules relating to enforcement of a contingent contract are laid down in **sections 32, 33, 34, 35 and 36 of the Act.**

(a) **Enforcement of contracts contingent on an event happening:** Section 32 says that "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void".

(b) **Enforcement of contracts contingent on an event not happening:** Section 33 says that "Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before".

(c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**

Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which

renders it impossible that he should so act within any definite time or otherwise than under further contingencies".

(d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

(e) **Contingent on specified event not happening within fixed time:** Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

(f) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

(c) 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.

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SEPT 2024

PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Working notes should form part of the Answers

Question 1

(a) (i) Mr. L let out his residential house to Mr. M for ₹ 50,000 p.m. for a period of one year. According to the Rent agreement, electricity bill will be paid by Mr. L. But Mr. L could not pay electricity dues up to 5 months, due to his financial hardships. The Electricity Board sent the notice of disconnection, if it is not paid within a week's time. To avoid all this, Mr. M paid the electricity bill of ₹ 50,000 with penalty. Later on, L refused to reimburse ₹ 50,000 and argued that he has paid bill voluntarily because of his own interest. Decide with reference to provisions of the Indian Contract Act, 1872 whether Mr. M is entitled to be reimbursed by Mr. L? ***(3 Marks)***

(ii) Mr. A offered to sell 25 chairs to Mr. B @ ₹ 1,500 per chair on 12.02.2024. A promised B that he would keep the offer open till 15.02.2024. However, on 13.02.2024, he sold those chairs to Mr. C @ ₹ 1,700 per chair without the knowledge of B. Mr. B communicated the acceptance of the above offer on 14.02.2024.

Advise, with reference to provisions of the Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A? ***(2 Marks)***

(iii) Mr. A was running an orphanage. His friend Mr. S, a philanthropist agreed to donate ₹ 2 lakh for treatment of a child, who was suffering from cancer. On emergency, Mr. A incurred ₹ 1.5 lakh on treatment of child. Now, Mr. S refused to pay. Whether Mr. A can claim ₹ 1.5 lakh from Mr. S with reference to provisions of the Indian Contract Act, 1872? ***(2 Marks)***

(b) (i) Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with

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his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short- listed friends as a nominee with effect from 1st January, 2024.

(1) Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.

(2) Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.

Referring to the provisions of the Companies Act, 2013, advise Kamal regarding eligibility of his short-listed friends to be appointed nominee and the procedure to be followed for changing the name of the nominee as per the provisions of the Companies Act, 2013. ***(4 Marks)***

(ii) XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹ 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company? ***(3 Marks)***

(c) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) "If a partner is otherwise expelled; the expulsion is null and void." Discuss. ***(4 Marks)***

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse. ***(2 Marks)***

Answer

(a) (i) According to Section 69 of the Indian Contract Act, 1872, a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

In the instant case, Mr. M paid the electricity bill to avoid the disconnection that was pending due to Mr. L's failure to fulfil his

contractual obligation. Hence, Mr. M is entitled to be reimbursed ₹ 50,000 from Mr. L.

(ii) In terms of Section 5 of the Indian Contract Act, 1872, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.

Accordingly, an offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

In the instant case, B cannot claim damages from A because the offer made by A is a mere offer and it can be withdrawn whenever A desires.

(iii) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).

However, in the following case, the agreement though made without consideration, will be valid and enforceable.

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

(b) (i) As per Rule 3 of the *Companies (Incorporation) Rules, 2014:*

Only a natural person who is an Indian citizen whether resident in India or otherwise

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Here, "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar can be appointed as a nominee in the OPC by Kamal as he is an Indian Citizen and non-resident in India.

Alternative Answer as follows:

As per Rule 3 of the *Companies (Incorporation) Rules, 2014:*

Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar cannot be appointed as a nominee in the OPC by Kamal as he has not stayed in the preceding F/Y 2022-23 for a single day.

Procedure for changing the nominee: The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar.

Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(ii) According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

(c) (i) If a partner is otherwise expelled, the expulsion is null and void.

According to Section 33 of the Indian Partnership Act, 1932

(i) the power of expulsion must have existed in a contract between the partners;

(ii) the power has been exercised by a majority of the partners; and

(iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

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

(i) The expulsion must be in the interest of the partnership.

(ii) The partner to be expelled is served with a notice.

(iii) He is given an opportunity of being heard.

Hence, it is correct to say that, if a partner is otherwise expelled, the expulsion is null and void.

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion"

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion 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 expulsion, until public notice is given of the expulsion.

However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

Question 2

(a) (i) M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of

basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.

On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties? ***(4 Marks)***

(ii) *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. ***(3 Marks)***

(b) *Referring to the provisions of the Companies Act, 2013, answer the following:*

(i) *"Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances.* ***(5 Marks)***

(ii) *What is the effect of Memorandum and Articles when registered?*

(2 Marks)

(c) *Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:*

(i) *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.* ***(4 Marks)***

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

Answer

(a) (i) According to Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.

Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description.

ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

ALTERNATE ANSWER TO SECOND PART

Section 13 of the Sale of the Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

According to above stated provision, there is a breach of condition, and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the entire quantity to fulfil his other contracts with other parties and claim damages.

(ii) 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.

(b) (i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions."

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.

(i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.

(ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.

(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 ***(The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).***

(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.

(ii) Effect of Memorandum and Articles: As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

(c) (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 the Trade Marks Act, 1999, as is likely to be mistaken for it,

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) of the Limited Liability Partnership Act, 2008]: 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.

Question 3

(a) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) 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.

(3 Marks)

(ii) On admission as a new partner, Amar agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by the all partners including Amar. Examine, whether Amar will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm. ***(2 Marks)***

(iii) Suman, having 10% share in the property of ₹ 200 lakh of a firm retires from the firm on 31st 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 Indian Partnership Act, 1932.

(2 Marks)

(b) (i) *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.* ***(4 Marks)***

(ii) *After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the*

correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.

Would your answer be different, if the company had a company secretary? ***(3 Marks)***

(c) (i) *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.* ***(3 Marks)***

(ii) *What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872?*

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts ***(3 Marks)***

Answer

(a) (i) 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.

(ii) Rights and liabilities of new partner: The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, Amar will not be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

(iii) 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
- 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, Suman is entitled to claim either interest on her share in the property i.e. ₹ 1,20,000 (6% of ₹ 20 Lakh) or a share of the profits i.e. ₹ 1 Lakh (10% of ₹ 10 Lakh) from the firm for the use of her share in the property.

Therefore, claim of Suman of ₹ 3 Lakh is not valid.

(b) (i) **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 ₹ 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 ₹ 1 crore as the spending thereof is not traceable.

(ii) The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

(c) (i) **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 cause 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.

(ii) (A) **Agreement made based on natural love and affection:** Conditions to be fulfilled under section 25(1) of the Indian Contract Act, 1872

(i) It must be made out of natural love and affection between the parties.

(ii) Parties must stand in near relationship to each other.

(iii) It must be in writing.

(iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

(B) Promise to pay time barred debts: Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

Question 4

(a) (i) 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 tum 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 f 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. ***(4 Marks)***

(ii) Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woollen clothes for men, women and kids like sweaters, monkey caps, mufflers; woollen coats, hand gloves etc. before the commencement of the winter season. The agreement expressly provides that the woollen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing the

situation and answer the following questions in light of the provisions of the Indian Contract Act, 1872:

(A) Whether company can reject the total supply by women group?

(B) Whether company can accept the total supply on request of women group? ***(3 Marks)***

(b) (i) With reference to provisions of the Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be complied with for not constituting such an offence? ***(4 Marks)***

(ii) (A) All cheques are bills while all bills are not cheques. Explain the additional features of a cheque which differentiate a cheque from bill as per the Negotiable Instruments Act, 1881.

(B) Ambiguous instrument ***(3 Marks)***

(c) Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework. ***(6 Marks)***

Answer

(a) (i) 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.

(ii) According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of acceptance of performance at time other than agreed upon -

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

In the instant case,

(A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.

(B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agreed.

(b) (i) According to Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, 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.

(ii) (A) According to the definition of cheque under section 6 of the Negotiable Instruments Act, 1881, a cheque is a species of bill of exchange. Thus, it should fulfil all the essential characteristics of a bill of exchange.

The following two features distinguish a cheque from bill

(a) Must be drawn on a specified banker

(b) It must be payable on demand

Thus, all cheques are bills while all bills are not cheques.

(B) Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly."

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument.

(c) 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.

Question 5

(a) (i) Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok. ***(4 Marks)***

(ii) Ansari of Jaipur sold 100 smart TV set @ ₹ 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ₹ 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.

Answer the following questions under the provisions of the Sale of Goods Act, 1930:

(A) Whether Ansari has right to stop the goods in transit?

(B) Whether Baburam can claim loss suffered due to non-delivery from Ansari? ***(3 Marks)***

(b) *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.* ***(7 Marks)***

(c) *In accordance with the provisions of the Indian Contract Act, 1872, answer the following:*

(i) *Rights of Bailor against any wrong doer (Third Party)*

(ii) *Duties of the Pawnee* ***(6 Marks)***

Answer

(a) (i) As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.

Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him.

Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

(ii) According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non- delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

(b) DISSOLUTION BY THE COURT (SECTION 44 of the Indian Partnership Act, 1932):

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.

(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 due by the partner, 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.

(c) (i) Suit by bailor & bailee against wrong doers [Section 180 of the Indian Contract Act, 1872]: If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

(ii) Duties of the Pawnee

Pawnee has the following duties:

a. Duty to take reasonable care of the pledged goods.

b. Duty not to make unauthorized use of pledged goods.

c. Duty to return the goods when the debt has been repaid or the promise has been performed.

d. Duty not to mix his own goods with goods pledged.

e. Duty not to do any act which is inconsistent with the terms of the pledge.

f. Duty to return accretion to the goods, if any.

Question 6

(a) Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario:

(i) Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties. ***(4 Marks)***

(ii) Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company.

(3 Marks)

(b) Answer the following as per the provisions of the Indian Contract Act, 1872:

(i) '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. ***(4 Marks)***

(ii) State the rights of Indemnity-holder when sued. ***(2 Marks)***

OR

(i) Explain any four differences between Contract of Indemnity and Contract of Guarantee. ***(4 Marks)***

(ii) Whether the threat to commit suicide is coercion? ***(2 Marks)***

(c) (i) Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:

(A) Bid by seller with or without notification

(B) Bidder to retract from his bid

(C) Effect of pretending bidding ***(4 Marks)***

(ii) Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930. ***(3 Marks)***

Answer

(a) (i) Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the

transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable. Delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57).

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid.

Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

(ii) **As per section 11 of the Negotiable Instruments Act, 1881, a** promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

(b) **(i)** 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.

(ii) Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

(a) all damages which he may be compelled to pay in any suit

(b) all costs which he may have been compelled to pay in bringing/ defending the suit and

(c) all sums which he may have paid under the terms of any compromise of suit.

OR

(b) (i) Distinction between a Contract of Indemnity and a Contract of Guarantee

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only **two parties** namely the indemnifier [promisor] and the indemnified [promisee]	There are **three parties**- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor

Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

(ii) Whether the threat to commit suicide is coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 of the Indian Contract Act, 1872 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

(c) (i) Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

(A) Bid with notification: 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.

Bid by seller without notification: 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.

(B) Bidder to retract from his bid: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

(C) Effect of pretending bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

(ii) Delivery of wrong quantity [Section 37 of the Sale of Goods Act, 1930]: 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)]

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JAN 2025

PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Working Notes should form part of the answer.

Question 1

(a) Examine the validity of the following agreements under the provisions of the Indian Contract Act, 1872 and justify your answer:

(i) Mrs. Priya pays a sum of ₹ 10,000 to a marriage bureau to provide information about the prospective grooms for her daughter's marriage.

(ii) Bharat agrees with John to sell his white bull. Unknown to both the parties, the bull was dead at the time of agreement.

(iii) Rishabh sells the goodwill of his shop to Omkar for ₹ 10,00,000 and promises not to carry on such similar business within the local limits so long as Omkar carries on like business.

(iv) A property worth ₹2,00,000 was agreed to be sold for just ₹25,000 by a person of unsound mind. ***(7 Marks)***

(b) (i) "Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient. ***(4 Marks)***

(ii) *Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company?* ***(3 Marks)***

(c) *A minor admitted to the benefits of a partnership firm is entitled to certain rights and may also have liabilities to third parties for the acts of the firm. Discuss the rights and liabilities (before attaining majority only) of the minor under the Indian Partnership Act, 1932.* ***(6 Marks)***

Answer

(a) (i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.

In the instant case, the agreement to pay ₹ 10,000 in exchange for a service (providing information about prospective grooms) is lawful.

Hence, the agreement is valid.

(ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.

In the instant case, the bull's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract.

Hence, the agreement is void.

(iii) Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, the restriction is limited to the local area and does not extend indefinitely.

Hence, the agreement is valid.

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(iv) According to section 12, a contract by a person who is not of sound mind is void.

In the instant case, a property worth ₹ 2,00,000 was agreed to be sold for just ₹ 25,000 by a person of unsound mind.

Hence, the agreement is void.

(b) (i) **Formation of companies with charitable objects etc. (Section 8 company):**

- Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
  - promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
  - Such company intends to apply its profit in
  - promoting its objects and
  - prohibiting the payment of any dividend to its members.
- The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to
  - Converts its status and change its name
  - Wind–up
  - Amalgamate with another company having similar object.
- A partnership firm can be a member of Section 8 company.

In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation).

The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm.

Hence, the ground for winding up taken on the basis of transfer of any part of profit by Harmony Foundation to the M/S LMP Associates is correct and sufficient.

However, M/S LMP Associates can become a member of Section 8 company. Therefore, this ground is not correct hence not sufficient.

(ii) Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles.

Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

(c) Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. The following are the Rights and Liabilities (before attaining majority):

(1) Rights:

(i) A minor partner has a right to his agreed share of the profits and of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

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(iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

(2) Liabilities:

Before attaining majority:

(a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

(b) Minor has no personal liability for the debts of the firm incurred during his minority.

(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee (which means minor can recover his share in the firm on proportionate basis from official receiver/assignee).

Question 2

(a) (i) MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.

On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss? What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract? ***(4 Marks)***

(ii) A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930. ***(3 Marks)***

(b) *Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit.* ***(7 Marks)***

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

(6 Marks)

Answer

(a) (i) According to Section 18 of the Sale of Goods Act, 1930, where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.

According to section 20 of the Sale of Goods Act, 1930, where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

In the instant case, since the microchips were specifically identified and were in a deliverable state when the contract was formed on August 1, 2023, ownership (and risk) likely passed to PQR Enterprises on August 1, 2023.

Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:

If the microchips were not specifically identified and marked for PQR Enterprises at the time of the contract, MNO Limited will suffer the loss, as the risk would not have transferred to PQR Enterprises.

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(ii) As per Section 27 of the Sale of Goods Act, 1930, "no one can transfer a better title than they themselves have." This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner.

Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.

(b) The Articles of Association are in fact the Bye-Laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

(1) Contains regulations: The articles of a company shall contain the regulations for management of the company.

(2) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(3) Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company,

or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(6) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(c) Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008): The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

(c) **Statement to be filed:**

- there shall be filed along with the incorporation document, a statement in the prescribed form,

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- made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the LLP;

(c) state the proposed business of the LLP;

(d) state the address of the registered office of the LLP;

(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

(g) contain such other information concerning the proposed LLP as may be prescribed.

(3) If a person makes a statement as discussed above which he—

(a) knows to be false; or

(b) does not believe to be true, shall be punishable

- with imprisonment for a term which may extend to 2 years and
- with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5 Lakhs.

Incorporation by registration (Section 12- Sufficient evidence): As per section 12, the Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of the sub-section has been complied with.

In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

Question 3

(a) *P, Q and R, are partners in a construction firm, PQR Associates. P buys cement on behalf of the firm from D. The cement is used in the ordinary course of the firm's business. P uses the cement for his personal purposes. The supplier D, who is unaware of the private use of cement by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the cement was never received by it. Referring to the provisions of the Indian Partnership Act, 1932, answer the followings:*

(i) *Whether the Firm's contention is tenable?*

(ii) *What would be your answer if a part of the cement so purchased by P was delivered to the firm by him, and the rest of the cement was used by him for his private use, about which neither the firm nor the supplier were aware?* ***(7 Marks)***

(b) (i) *The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:*

Central Government	*26%*
State of Maharashtra	*18%*
State of Tamilnadu	*24% and*
Public	*32%*

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013. ***(5 Marks)***

(ii) *Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013?* ***(2 Marks)***

(c) *What are the agreements which are held to be opposed to public policy under the Indian Contract Act, 1872. Explain any 6 such agreements.* ***(6 Marks)***

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Answer

(a) The given question is based on the Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932. Section 18 deals with the Partner to be an agent of the firm. This means that a partner is the agent of the firm for the purpose of the business of the firm.

The partner indeed virtually holds the character of both a principal and an agent. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

According to section 25, the partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. "Act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

As per section 26, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

(a) in the ordinary course of the business of the firm

(b) with the authority of the partners.

According to the facts given in the questions, P, a partner to PQR Associates, buys cement on behalf of the firm from D in the ordinary course of the firm's business. P uses the cement for his personal purposes. D, the supplier was unaware of the private use of cement by P and claims price from the firm. Firm refuses to pay the price on the ground that the cement was never received by it.

Referring to the stated provisions of the Indian Partnership Act, 1932, following are the answers:

(i) Said Section is applicable only to the act done by partners for the purpose of the business of the firm. In such case, partner act as the

agent of the firm for the purpose of the business of the firm. Since in the given case, P, buys cement on behalf of the firm from D in the ordinary course of the firm's business.

Therefore, in the given case, firms' contention of refusal to pay the price on the ground that the cement was never received by it, is not tenable.

(ii) Further for commission of the wrongful act by the partner, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

(a) in the ordinary course of the business of the firm

(b) with the authority of the partners.

In the given case, part of the cement so purchased by P was delivered to the firm by him and the rest of the cement was used by him for his private use, was not known to the firm and the supplier. Since the act of the P to purchase the cement was in the ordinary course of business with the authority of the partner, however wrongful use by the partner will make the firm liable to the same extent as the partner for loss or injury caused to D.

However, PQR Associates can take action against P, the partner.

(b) (i) **Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013:** No institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be

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regarded as 'Public Financial Institution' under the Companies Act, 2013.

By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(ii) the Infrastructure Development Finance Company Limited,

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

(ii) No, it is not mandatory to have common seal for the company.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

(c) Some of the agreements which are held to be opposed to public policy are-

(1) Trading with enemy: Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

(2) 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.

Under the Indian Criminal Procedure Code, 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.

(3) Maintenance and Champerty: *Maintenance* is an agreement in which a person promises to maintain suit in which he has no interest.

Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.

(a) It is unreasonable so as to be unjust to other party or

(b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

(4) 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.

(5) Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

(6) Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

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(7) Interference with the course of justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy.

(8) Interest against obligation: The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

(1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

(2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ₹ 200,000 privately; the agreement is void.

(9) Consideration Unlawful in Part: By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

Question 4

(a) A, B and C jointly promised to pay D a sum of ₹ 6,000. Examine, considering the provisions of the Indian Contract Act, 1872 -

(i) Can D compel any of three parties A, Band C to pay him ₹ 6,000?

(ii) C is compelled to pay the whole of the amount to D. Can he recover anything from A and B, when -

(1) Both A and B were solvents.

(2) A is not in a position to pay anything. ***(7 Marks)***

(b) What are the rules governing the compensation payable in the event of dishonour of a negotiable instrument under the provisions of the Negotiable Instruments Act, 1881? ***(7 Marks)***

(c) *Ashok and Vimal are pursuing chartered accountancy course and discussing about the structure of the Indian judicial system. Explain them the functions of judiciary system of India and the hierarchy of courts and briefly explain their functioning under the Indian Regulatory Framework.* ***(6 Marks)***

Answer

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

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

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

In the instant case,

(i) D can compel any of three parties A, B and C to pay him ₹ 6,000.

(ii) (1) C can recover the contribution from A and B because A, B and C are joint promisors.

(2) A is unable to pay anything, C is compelled to pay the whole. C is entitled to receive ₹ 3,000 from B.

(b) 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:

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(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.

(c) 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. It was established on 26th January, 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench

of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

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

Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

Jurisdiction means the power to control. Courts get territorial Jurisdiction based on 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.

Question 5

(a) (i) The Institute of Science, Pune (the buyer), placed an order for various chemicals worth ₹ 1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right

of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund. ***(4 Marks)***

(ii) Adarsh visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car. ***(3 Marks)***

(b) (i) Explain the following terms under the Indian Partnership Act, 1932:

(1) Partner by holding out

(2) Nominal Partner ***(4 Marks)***

(ii) "Dissolution of a partnership firm may occur by mutual agreement with the consent of the majority of partners, while compulsory dissolution requires an order from the court." Discuss this statement with reference to the relevant provisions of the Indian Partnership Act, 1932. ***(3 Marks)***

(c) Explain with reference to the Indian Contract Act, 1872:

(i) When a contract is said to be induced by "undue influence".

(ii) When a party is deemed to be in a position to dominate the will of another. ***(6 Marks)***

Answer

(a) (i) Delivery of the goods to the carrier [Section 23(2) of the Sale of Goods Act, 1930]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

In the instant case, the Institute of Science, Pune placed an order for various chemicals worth ₹ 1,50,000 from a supplier in Delhi. The seller

dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science, Pune (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

(ii) Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

There are two requirements for this condition to apply:

(a) Goods should be bought by description.

(b) The seller should be a dealer in goods of that description.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.

Therefore, Adarsh can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.

(b) (i) (1) Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

(2) Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

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He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

(ii) Dissolution by Agreement (Section 40 of the Indian Partnership Act, 1932):

Section 40 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 partners. 'Contract between the partners' means a contract already made.

Hence, the statement 'dissolution of a firm by the consent of the majority of the partners is not correct unless otherwise provided in a contract between them.

(iii) Compulsory dissolution (Section 41):

A firm is compulsorily dissolved

- by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Hence, the statement 'compulsory dissolution requires an order from the court' is not correct.

(c) (i) Undue influence (Section 16): 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".

(ii) Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

(a) Real and apparent authority: Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

(b) Fiduciary relationship: Where relation of trust and confidence exists between the parties to a contract. Such type of relationship

exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.

(c) Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

(d) Unconscionable bargains: Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

Question 6

(a) (i) Anjali purchased various cosmetic products worth ₹ 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 ₹ 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 ₹ 15,000. It is to be noted that the amount of ₹ 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 ₹ 17,000? ***(4 Marks)***

(ii) Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns. However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on the provisions of the Negotiable Instruments Act, 1881, examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law. ***(3 Marks)***

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

(6 Marks)

OR

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

(c) *What are the rights of a buyer, when seller commits a breach of contract under the provisions of the Sale of Goods Act, 1930?* ***(7 Marks)***

Answer

(a) (i) 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 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 ₹ 17000. She is liable only for ₹ 15000.

(ii) Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]

As per section 64 of the Negotiable Instruments Act, 1881, 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.

So, presentment for payment must be made to the person primarily liable on the instrument, or in their absence, at the proper place during the usual business hours.

In this case, Priya presented the bill at Sanjay's office during regular business hours, but since Sanjay was not present, she left the bill with his assistant.

While leaving the bill with the assistant might be considered a practical step, it does not fulfil the strict legal requirement of presenting the bill directly to the drawee (Sanjay) or his authorised representative for payment.

Therefore, the presentation of the bill by Priya to Sanjay's assistant is not valid under law.

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

To constitute a valid agency in an emergency, following conditions must be satisfied:

(i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.

(ii) There should have been actual and definite commercial necessity for the agent to act promptly.

(iii) the agent should have acted bonafide and for the benefit of the principal.

(iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and

(v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

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OR

(b) Under the Indian Contract Act, 1872, both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

S.No.	Sub Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him
5.	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

(c) If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. **Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

2. **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

   This remedy is allowed by the court subject to these conditions:

   (a) The contract must be for the sale of specific and ascertained goods.

   (b) The power of the court to order specific performance is subject to provisions of the Specific Relief Act of 1963.

   (c) It empowers the court to order specific performance where damages would not be an adequate remedy.

   (d) It will be granted as remedy if goods are of special nature or are unique.

3. **Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –

   (i) set up against the seller the breach of warranty in diminution or extinction of the price; or

   (ii) sue the seller for damages for breach of warranty.

4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

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5. Suit for interest:

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit filed by him for the refund of the price (in a case of a breach of the contract on the part of the seller) from the date on which the payment was made.

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MAY 2025

PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Working notes should form part of the answers.

Question 1

(a) ABC Infrastructure Ltd. was running business successfully from several years. P was the purchase manager of company. He authorized his agent Q to buy Raw Material on his behalf for construction of Roads in Delhi. He instructed Q to buy only Mazboot Brand of Cement @ ₹ 2,000 – 2,500 per ton to maintain quality of Roads in Delhi. However, Q bought 1,000 tons of Mazboot Brand of cement from Mr. R a very well-known vendor of ABC Infrastructure Ltd. @ ₹3,500/- per ton. Mr. Q has not disclosed the fact to R that he was buying cement for ABC Infrastructure Ltd. When P discovered this aspect, he refused to pay Mr. R and rejects the cement bought by Q on the ground that Q has exceeded the authority. Mr. R suffered a huge loss on account of this transaction. Give your opinion in accordance with provisions from the Indian Contract Act, 1872:

(i) Whether P was bound to pay Mr. R for cement purchased by his agent Mr. Q?

(ii) On the other hand, Q being agent refused to accept any liability to compensate R. In this situation, Whether Mr. R can file a suit against Q? ***(7 Marks)***

(b) (i) State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:

1. STS Pvt. Ltd., having a turnover of ₹ 10 crores and the paid-up capital of ₹ 1 crore (1,00,000 equity shares of ₹ 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.

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2. *ZX Ltd., having a paid-up capital of ₹ 3 crores and turnover of ₹ 35 crores.* ***(4 Marks)***

(ii) *The paid-up equity share capital of ACD Ltd. is ₹ 80 crores & preference share capital of ₹ 20 crores. B Ltd. holds equity shares in ACD Ltd. worth ₹ 15 crores and preference shares worth ₹ 10 crores.*

Can B Ltd. be considered as an Associate Company of ACD Ltd.?

(3 Marks)

(c) *In accordance with provisions of the Indian Partnership Act, 1932, explain the following:*

(i) *The rights of an outgoing partner to carry on competing business.*

(ii) *The rights of a partner to be indemnified by the firm and the liability of a partner to indemnify the firm.* ***(6 Marks)***

Answer

(a) Principal's liability when agent exceeds authority [Section 227 of the Indian Contract Act, 1872]: When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal not bound when excess of agent's authority is not separable [Section 228]: Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

When the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

When the **agent does not disclose the name of the principal** then there arises a presumption that he himself undertakes to be personally liable.

In the instant case, Q violated the instructions of P by buying cement at ₹ 3,500 per ton, which is beyond the authorized price limit. Furthermore,

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Q did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

Therefore, the answers are

(i) No, P was not bound to pay Mr. R, as the agent Q exceeded his authority, and the deviation was inseparable from the authorized act.

(ii) Yes, Mr. R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the principal.

Alternative Answer

In the light of the given facts in the question, P, the Purchase Manger of the ABC Infrastructure Ltd., authorised Q his agent to buy raw material on his behalf for construction of roads in Delhi. He instructed Q to buy only Mazboot brand of cement @ ₹ 2000-2,500 per ton. However, Q, violated the instructions of P by buying cement at ₹3,500 per ton. Furthermore, he did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

The stated issue marked in the question is related to the undisclosed principal and exceeding of his authority. Given situation can be dealt with the provisions under section 230, 231 & 233 of the Indian Contract Act.

According to the provision stated in section 230, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

However, there are exceptions where the agent is presumed to have agreed to be personally bound.

Where the agent does not disclose the name of his principal or undisclosed principal (Principal unnamed), then there arises a presumption that he himself undertakes to be personally liable. Also, when the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act. In that case the agent can be made liable personally for the breach of warranty of authority.

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Further section 231 of the Indian Contract Act specifies rights of third parties to a contract made by undisclosed agent.

As per the provision, if an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

Section 233 gives the option to a third person to sue the Agent or the Principal. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Therefore, the following are the answers:

(i) No, P was not bound to pay Mr. R for purchase of the cement @ ₹ 3500/- per ton, as the agent Q does not disclose the name of his principal and also exceeded his authority, thus making himself to be personally bound and liable for the doing of said transaction.

(ii) Yes, in the light of the section 233, Mr. R is given an option to sue the agent or the Principal or both. Yes, R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the P (principal).

(b) (i) According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—

(i) **paid-up share capital** of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

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In the instant case,

(i) STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ₹ 10 crores and ₹ 1 crore respectively), but since it is the subsidiary c.ompany of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ₹ 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.

(ii) ZX Ltd. cannot be considered as a small company since it is a public company.

(ii) As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, the paid up share capital of ACD Ltd. is ₹ 80 crores. B Ltd. holds equity share capital of ₹ 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore ACD Ltd. cannot be considered as an Associate Company of B Ltd.

Alternate conclusion

Since the question is asked with reference to B Ltd. who had stake of ₹ 15 crores in the ACD Ltd. to be considered as an associate company or not.

So, the conclusion may be alternatively as follows:

In the given case, the paid up share capital of ACD Ltd. is ₹ 80 crores. B Ltd. holds equity share capital of ₹ 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore, B Ltd. cannot be considered as an Associate Company.

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(c) (i) Rights of outgoing partner to carry on competing Business (Section 36 of the Indian Partnership Act, 1932)

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.

Agreement in restraint of trade- A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

(ii) Right of the partners to be indemnified by the firm [Section 13(e)]: Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

Liability of partner to indemnify the firm [Section 13(f)]: A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

Question 2

(a) S purchased a dress from a reputed showroom and made the payment in cash. The dress she purchased require some alteration. The shopkeeper assured S that it would take just one day to get the dress altered. It was agreed that once the dress was altered the shopkeeper would inform S through phone and she would collect the dress. Next day, by evening the dress was altered and kept ready to be delivered to S. The shopkeeper however forgot to inform S that the dress was ready.

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In the meantime, a short circuit occurred near the delivery counter of the shop and some packets ready for delivery caught fire. After waiting for 10 days, when, S went to collect her dress she was informed that she came late and her dress was burnt in fire. S, then asked for refund of money what she paid. The shopkeeper refused, by saying that the dress was kept ready the very next day of purchase and the loss due to fire occurred after a week. He refused to bear the liability by saying that if S had collected the dress on time, it would not have been burnt. S insisted that she was waiting for a call from the shop and thus, entitled to claim the refund of cost of dress.

Examine, with reference to the provisions of the Sale of Goods Act, 1930, whether shopkeeper will be liable to refund the cost of dress to S? ***(7 Marks)***

(b) *Doctrine of indoor management allows all those who deal with the company to assume that the officers of the company have observed the provisions of the articles. In light of the above statement, explain the doctrine of indoor management and its exceptions, if any, according to provisions of the Companies Act, 2013.* ***(7 Marks)***

(c) (i) *Limited Liability Partnership (LLP) gives the benefits of Limited Liability of a company on one hand and the flexibility of Partnership on the other. Discuss according to provisions of the Limited Liability Partnership Act, 2008.* ***(3 Marks)***

(ii) *Raju and his friend Anil have approached you to help them to form a LLP. The object of the proposed LLP is to run a charitable school which provides free education to the poor children. What would be your suggestion in accordance of provisions of the Limited Liability Partnership Act, 2008?* ***(3 Marks)***

Answer

(a) **Specific goods to be put into a deliverable state (Section 21 of the Sale of Goods Act, 1930):** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

According to section 26, "unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".

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However, Section 26 also lays down an exception to the rule that 'risk follows ownership.' It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

In the instant case, S had paid in full and purchased a specific dress but the dress required alteration, and it was agreed that the shopkeeper would inform S after alteration for collection. The ownership had already passed to S when she paid for the dress, subject to alteration. The delivery was conditional upon the shopkeeper informing S after alteration.

Even though the ownership may have passed to S, the seller (shopkeeper) failed to complete the delivery by not informing S. Under Section 26, when delivery is delayed due to the fault of the seller, the loss falls upon the party at fault.

Therefore, the shopkeeper is liable to refund the cost of the dress to S.

Alternative Answer

The given problem is based on the concept "Agreement to Sell" under section 4 of the Sale of Goods Act, 1930. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – "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, it is called an agreement to sell." Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date. Hence, in an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

In the instant case, though S had paid and purchased a specific dress, but the dress required alteration. Shopkeeper assured S that it would take just one day to get the dress altered and it was agreed that he would inform S after alteration for collection. This reflects that transfer or property in goods is to be transferred subject to fulfilment of the condition i.e., after the alteration.

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Further, Reservation of right of disposal given under Section 25, is applicable here. This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Therefore, still the ownership lies with the seller on account of non-fulfilment of condition as to informing to the S that the dress is altered and is ready.

Further the plea taken by Shopkeeper that 10 days were passed after the alteration done and he is not liable for damage caused, is not justifiable on account of not being a reasonable circumstance and a ground.

Hence, in the light of the given facts, the shopkeeper is liable to refund the cost of the dress to S.

(b) **Doctrine of Indoor Management:** According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above-mentioned doctrine of Indoor Management has limitations/exceptions of its own. That is to say, it is inapplicable to the following cases, namely:

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(a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

(c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

(c) (i) **LLP gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other:**

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

(ii) The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

In the instant case, Raju and Anil cannot form LLP to run a charitable school which provides free education to the poor children.

In view of above it is suggested to them that they can form a section 8 company for this purpose.

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Question 3

(a) *ABC & Co. is a renowned partnership firm doing business in textile industry from last twenty years. But due to technical up-gradation, firm incurred heavy debts of ₹ 50 lakhs. To maintain the integrity of the firm they introduced Mr. D, as a new partner. Before admission of D, other partners A, B, and C decided on their own and made an agreement with the creditors that the new partner will be liable for existing debt through novation. When D joins, he came to know about the debt of ₹ 50 lakhs. With reference to the provisions of the Indian Partnership Act, 1932, give your opinion:*

(i) *Whether D would be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors?*

(ii) *Whether your answer will be different if D was minor at the time of admission?*

(iii) *Whether D would be liable to pay the debt upon becoming major?*

(7 Marks)

(b) (i) *The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ₹ 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan?*

(4 Marks)

(ii) *SNM Ltd. was registered in 2021 with a share capital of ₹ 50 Lakh divided into 5 lakhs equity share of ₹ 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM.*

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With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025. ***(3 Marks)***

(c) *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.* ***(6 Marks)***

Answer

(a) (i) Liability of D: As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

(ii) If D was minor at the time of admission: As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

Minor has no personal liability for the debts of the firm incurred during his minority.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

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Hence, D would not be liable in this case also.

(iii) Liability of D upon becoming major: A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

Hence, D would not be liable to pay the existing debt upon becoming major.

(b) (i) It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

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(a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.

(b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

(ii) Formation of companies with charitable objects etc. (Section 8 company): Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

(c) (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.

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(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.

Question 4

(a) X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ₹ 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ₹ 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ₹ 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ₹ 60,000/-. X denied for compensation by saying that he was not aware about the engine and brakes fault. Y filed a suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

(i) Whether Y can withheld the amount of hire charges ₹ 50,000/- on account of non-payment of damages?

(ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car? ***(7 Marks)***

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(b) (i) *"Delivery of an instrument is essential whether instrument is payable to bearer or order for effecting the negotiation." Discuss this statement with reference to provisions of the Negotiable Instruments Act, 1881.* ***(3 Marks)***

(ii) *Differentiate between a promissory note and bill of exchange.*

(4 Marks)

(c) *Explain in brief the important functions played by the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law and Justice in enforcing the law in India.* ***(6 Marks)***

Answer

(a) Bailment: 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.

Bailor's duty to disclose faults in goods bailed in case of non-gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ₹ 50,000. During the journey, Y has to spend ₹ 10,000 for repair of engine and paid ₹ 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

(i) Y can withhold the hire charges of ₹ 50,000 on account of non-payment of damages and claim an additional ₹10,000, from X.

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(ii) X is liable for the full ₹ 60,000 (₹10,000 repair + ₹ 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

(b) (i) As per Section 46 of the Negotiable Instruments Act, 1881, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

(ii) Difference between promissory note and bill of exchange

S. No.	Basis	Promissory Note	Bill of Exchange
1.	**Definition**	"A Promissory Note" is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
2.	**Nature of Instrument**	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.

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3.	**Parties**	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer (ii) the drawee (iii) the payee
4.	**Acceptance**	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	**Payable to bearer**	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

(c) The Ministry of Finance

- The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- One of the important functions of the Finance Ministry is the presentation of the Union Budget. This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.

The Ministry of Corporate Affairs

- The Ministry of Corporate Affairs is an Indian Government Ministry.
- It is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

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- It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry of Law and Justice

- The Ministry of Law and Justice in the Government of India is a Cabinet Ministry
- It deals with the
  - management of the legal affairs, through the Department of Legal Affairs
  - legislative activities through the Legislative Department
  - administration of justice in India through the Department of Justice
- The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

Question 5

(a) (i) P sold certain antique items to Q for ₹ 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment. Q transferred a sum of ₹ 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency.

By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods.

According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only ₹ 20,000/- was left to be paid? ***(4 Marks)***

(ii) An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest

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bidder". During the auction, L bids for an antique sculpture, worth ₹ 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees. Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930. ***(3 Marks)***

(b) "The partner indeed virtually embraces the character of both a principal and an agent. The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of Partnership." Explain with reference to provisions of the Indian Partnership Act, 1932. ***(7 Marks)***

(c) (i) Give your opinion with reference to provisions of the Indian Contract Act, 1872:

1. *Whether Joint promisor and promisee voluntary discharge their obligation even after death?*
2. *In case they won't be able to discharge their obligation, whether any of the joint promisor may be compelled?*
3. *What would be the situation in case of default by any one of them?*

(4 Marks)

(ii) What are the effects of Coercion? "Whether threat to commit suicide is coercion"? Elaborate with reference to provisions of the Indian Contract Act, 1872. ***(2 Marks)***

Answer

(a) (i) Rights of lien (Section 47 of the Sale of Goods Act, 1930)

An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal

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to deliver them to the buyer until the price due in respect of them is paid or tendered.

Exercise of right of lien: 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, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024. Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ₹ 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

(ii) Legal Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce "you are the highest bidder".

Therefore, L's claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.

(b) The partner indeed virtually embraces the character of both a principal and an agent.

As per Section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purpose of the business of the firm. So as far as he acts for himself and in his own interest in the common concern of the

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partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of partnership.

Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

   Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

(c) (i) 1. According to section 42 of the Indian Contract Act, 1872, if two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last

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survivor the legal representatives of all the original co-promisors must fulfil the promise.

Hence, the legal representative can jointly discharge the obligations of joint promisor and promisee, after their death.

2. As per section 43, each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

   Hence, the joint promisor may be compelled.

3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

(ii) Effects of coercion under section 19 of the Indian Contract Act, 1872

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Threat to commit suicide – Whether it is coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

Question 6

(a) Ram purchased a second-hand car from his friend Rohan for ₹ 5 lakhs on 10th November, 2022. He paid ₹ 4 lakh immediately and promised to pay ₹ 1 lakh within a year. But, he could not pay the remaining amount till December-2023. On 5th January, 2024 Ram received an invitation for Rohan's wedding which he could not attend but sent a cheque of ₹ 51,000 as gift by post.

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When Rohan deposited the cheque, it was returned unpaid due to insufficient balance in the account of Ram. Rohan considered it as an offence under Section 138 of the Negotiable Instruments Act, 1881.

Advise

(i) Whether Ram would be held liable for dishonour of cheque?

(ii) Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881. ***(7 Marks)***

(b) With reference to provisions of the Indian Contract Act, 1872 define the following terms:

(i) Quasi-contracts and its salient features

(ii) Responsibility of finder of goods ***(6 Marks)***

OR

(b) Explain the following terms with reference to the Indian Contract Act, 1872:

(i) Pledge by mercantile agent

(ii) Pledge by person in possession under voidable contract ***(6 Marks)***

(c) With reference to provisions of the Sale of Goods Act, 1930, answer the following:

(i) What do you mean by Reservation of right of disposal? State the circumstances under which right of disposal may be reserved.

(ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer losses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition. ***(7 Marks)***

Answer

(a) According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a

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mere moral obligation, or for an illegal consideration, would be outside the purview of this section]

- is returned by the bank unpaid,
- either because of the—
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, 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.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

(i) In the given question, Rohan received a cheque from Ram, for ₹ 51,000 as a gift for his marriage. In terms of section 138, cheque given as a gift does not fall within this section. Hence, Ram would not be held liable for dishonour of cheque.

(ii) The explanation to the section provides that for the purpose of section 138 only a legally enforceable debt or other liability is to be taken into consideration. The cheque of ₹ 51,000 was issued in the nature of a gift and not as a part of the payment for the balance amount of car. Hence, Rohan was not justified in considering the dishonour of cheque, an offence under section 138 of the Negotiable Instruments Act, 1881.

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

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Salient features of quasi contracts:

(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.

(b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and

(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

(ii) Responsibility of finder of goods

As per 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.

OR

(b) (i) Pledge by mercantile agent: According to section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

(ii) Pledge by person in possession under voidable contract

According to section 178A of the Indian Contract Act, 1872, When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time

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of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

(c) (i) **Reservation of right of disposal:** Section 25 of the Sale of Goods Act, 1930, preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

(1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.

(2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

(ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

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In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

(iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

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PAPER – 2: BUSINESS LAWS

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Working Notes should form part of the answer.

Question 1

(a) (i) Mr. VG and Mr. PG were trading in unlisted shares for the last seven years. They used to borrow funds from each other whenever required for any trade. Within a week's time, they used to refund the money to each other as per circumstances of the case. They were following this practice for the last five years. On 25th January 2025, Mr. PG wants to buy 20,000 shares of an unlisted company @ ₹500/- each. But due to insufficiency of funds, he asked Mr. VG for ₹40 lakhs. Mr. VG transferred ₹40 lakhs to Mr. PG. After about three months, Mr. VG reminded that Mr. PG had not refunded ₹40 lakhs to him till then. He asked him to pay back his money. Mr. PG told him that he was trying very hard to sell the shares at a reasonable price of 10% more than the price at which he bought these shares but was unable to do so due to market conditions. He asked Mr. VG to sell his shares on his behalf and authorised him to appropriate the amount of loan of ₹40 lakhs with interest out of the sale proceeds. Mr. VG agreed to do so.

After about 15 days, when market started recovering Mr. PG denied and revoked the authorization by saying that he would sell his shares himself.

With reference to provisions of the Indian Contract Act, 1872, whether the revocation of said agency by Mr. PG was lawful? ***(3 Marks)***

(ii) M/s GS Famous General Store in NK Market Delhi got a purchase order of 5 kg. Mamra Badam @ ₹3,400/- per kg. from Mr. PK to deliver at his residence in Rohini. When the delivery boy of M/s GS Famous General Store reached at Mr. PK's residence, he found the door locked. When the delivery boy called him on mobile telephone, he told him to hand over the goods to his neighbour Mr. Shah. Mrs. Shah was unaware of the fact that the Mamra Badam were not belonging to them, mixed the Mamra Badam with California Almond. When Mr. Shah told her that the Mamra

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Badam were belonging to Mr. PK, she again packed the 5 kg. Mamra Badam and delivered it to Mr. PK. This fact came to light when Mr. PK returned the packet to M/s GS Famous General Store by saying that it is not up to the quality and he refused to accept the packet.

In above circumstances, what is the remedy available to Mr. PK according to provisions of the Indian Contract Act, 1872? ***(4 Marks)***

(b) Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by M/s Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal. ***(5 + 2 = 7 Marks)***

(c) A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.

(i) A filed a suit against B who had stolen the goods of the firm.

(ii) A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.

(iii) M filed a suit against the firm M/s ABC & Associates for the recovery of ₹10,000/- dues from the firm. M also owed ₹4,000/-to the firm. The firm claimed a set off of ₹4,000/-. ***(6 Marks)***

Answer

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

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

In the instant case, Mr. PG appointed Mr. VG to sell his shares on his behalf and authorized him to appropriate the amount of loan of ₹ 40 lakh with interest out of the sale proceeds.

Since, interest was created in favour of Mr. VG, thus the revocation of the said agency is not lawful.

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

According to Section 160 & 161 of the Indian Contract Act, 1872, it is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

In the given question, Mrs. Shah mixed Mamra Badam with California Almond bailed by Mr. PK and then packed without information and delivered to Mr. PK. Mamra Badam once mixed cannot be separated.

As she mixed the two different kinds of almond, Mr. PK is entitled to be compensated by Mr. Shah. He cannot return goods to M/s GS Famous General Store.

(b) Yes, I agree that a company is an Artificial Person.

A Company incorporated under the provisions of the Companies Act, 2013 is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law.

Further, the Company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

As the Company is an artificial person, it can act only through some human agency, viz., directors. The directors can control affairs of the company but they are not the "agents" of the members of the company. The directors

can either on their own or through the common seal, if any, (of the company) can authenticate its formal acts.

Further, the Company being an artificial person has perpetual succession and it continues to exist until it is legally dissolved. The members of a company may come and go but the company will go on forever.

However, the Company being an artificial person cannot have citizenship, lack of physical action and corporate veil can be lifted.

Thus, a company is an artificial legal person.

Authorization by a Company not having a Common Seal:

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the Company has appointed a Company Secretary.

Hence, M/s Beeta Limited can do the authorization as mentioned in the above manner.

(c) (i) A filed a suit against B who had stolen the goods of the firm:

The said suit by A is Maintainable.

Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.

Hence, the suit filed against B for the theft of the goods of the firm is maintainable.

(ii) A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution

The said suit by A is Maintainable.

Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim

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is valid as the shares are the assets of the dissolved firm and A can claim it even if the firm is unregistered.

(iii) M filed a suit against the firm for recovery of ₹10,000/- dues. M also owed ₹4,000/-. The firm claimed a set-off.

The said suit by M is Maintainable

Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

Here, M filed a suit against the firm for the recovery of ₹10,000 dues from the firm. M also owed ₹4,000/- to the firm.

The firm cannot set-off the claim of ₹4,000/- as it is more than ₹100/. – Nevertheless, M is entitled for recovery of ₹ 10,000 from firm.

Question 2

(a) (i) X offered to sell Y a machine for ₹5,00,000/-. Y refused to buy it unless the machine is made into a running condition. X agreed to do the same but while the machine was being repaired, it was destroyed without the fault of any person. With reference to the relevant provisions of the Sale of Goods Act, 1930 examine whether X can recover the price from Y?

(4 Marks)

(ii) For the purpose of making uniforms for the employees, VK bought dark blue coloured cloth from PK. But did not disclose to the PK the purpose of the said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps and boots. Advise VK whether he is entitled to have any remedy, as per the provisions of the Sale of Goods Act, 1930.

(3 Marks)

(b) Explain the Memorandum of Association (MOA) and Articles of Association (AOA) of a company. Also explain any three differences between MOA and AOA. ***(7 Marks)***

(c) *Five close friends decided to form a Limited Liability Partnership firm 'EDUDED LLP' for educating poor children as non-profit organization. They were Mr. A (Non-resident), Mr. B (Non-Resident), Ms. C (resident), Ms. D (resident) and Ms. E (resident). It was decided that Mr. A and Mr. B will be appointed as designated partners.*

With reference to provisions of the Limited Liability Partnership Act, 2008, answer each of the following:

(i) *Whether EDUDED LLP can be formed for above purpose?*

(ii) *Whether Mr. A and Mr. B can be appointed as designated partners in EDUDED LLP?* ***(6 Marks)***

Answer

(a) (i) According to the provisions of the Sale of Goods Act, 1930, in case of 'specific goods', the property shall pass on the formation of contract only if the goods are specific (Section 19).

Goods are in a deliverable state i.e. the seller has done all that he is required to do, to put the goods in such a state that the buyer shall be bound to take the delivery of the same (Section 20).

If the seller is bound to do something in respect of the goods to put them in a deliverable state and he is not yet done the same, then the possession of goods shall pass on to the buyer in the future, when the seller does what is required to do and brings the same to the knowledge of the buyer. (Section 21).

In the given case, the seller X was required to conduct repairs in respect of the machine before he buys the same. Thus, the possession of property intends to take place when the repairs are conducted by X and Y has the knowledge of the same. Since the machine is destroyed before repairs could be completed, the possession of property has not taken place.

The risk of loss vests with X and therefore cannot recover the price from Y.

ALTERNATE ANSWER

(a) (i) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): Where there is an agreement to sell

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specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged that they no longer answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

In the instant case, the machine was destroyed without the fault of any person while being repaired. X cannot recover the price from Y as the performance of contract became impossible due to supervening impossibility.

(ii) According to Section 16(1) of the Sale of Goods Act, 1930, normally in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied.

The general rule is that of "Caveat Emptor" that is "let the buyer beware".

But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, VK purchased the dark blue coloured cloth from PK without informing him i.e. uniforms would be prepared and used by employees. Therefore, VK cannot make PK responsible on the ground that cloth was found unfit.

VK cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from PK.

In view of the above, VK will not succeed in getting any remedy as per the provisions of the Sale of Goods Act, 1930.

(b) Memorandum of Association (MoA)

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 contains the fundamental conditions upon which alone the Company can be incorporated. It is the very foundation on which the whole edifice of the company is built.

Articles of Association (AoA)

The Articles of Association of a Company are its Rules and Regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the Company. Articles of Association is in fact, the Rules, Regulations and Bye Laws for the internal management of the affairs of the Company.

The following are the key differences between the Memorandum of Association and the Articles of Association:

(1) **Clauses** - Under Section 4 of the Companies Act, 2013, a Memorandum of Association (MOA) must contain six mandatory clauses viz., the Name Clause, Registered Office Clause, Object Clause, Liability Clause, Capital Clause, and Subscription Clause. These clauses, which serve as a company's charter, define its fundamental identity, scope of operations, and the relationship between the company and the outside world.

Whereas the Articles of Association of a Company shall contain the regulations for management of the company. Them Articles shall also contain such matters, as may be prescribed but nothing prescribed in this sub-section shall be deemed to prevent a Company from including such additional matters in its Articles as may be considered necessary for its management.

(2) **Objectives:** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.

(3) **Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

(4) **Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.

(5) **Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

(c) (i) According to Section 11 of the Limited Liability Partnership Act, 2008, the essential requirement of forming LLP is carrying on a lawful business with a view to earn profit. EDUDED LLP cannot be formed for educating poor children as a non-profit organization.

In view of the above, a LLP cannot be formed for charitable or non-economic purpose.

(ii) Designated Partners (Section 7 of the Limited Liability Partnership Act, 2008):

Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a Resident in India.

For the purpose of this section, the term Resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

As EDUDED LLP cannot be formed because its purpose is for non-profit organization, the question of appointing Mr. A and Mr. B as designated partners does not arise.

Note: However, if the EDUDED LLP can be formed, Mr. A and Mr. B cannot be appointed as designated partners in EDUDED LLP as both are Non-Resident and the condition that at least one designated partner must be a resident in India is not fulfilled. Therefore, one designated partner must be either Ms. C or Ms. D or Ms. E as all three of them are resident.

Question 3

(a) M/s M&M Associates was registered in 1985 by its three partners namely Mr. X, Mr. Y and Mr. Z as the partnership at will. On 5th January 2022, Mr. X, being a very senior partner of age 75 years decided to retire and transfer his shares in the firm to his grandson Mr. S, who was 17 years old at the time of the transfer. Mr. Y and Mr. Z were not interested but when they came to know that Mr. S is a minor, they agreed to admit Mr. S as partner.

On 5th October, 2023 at the time of inspection of books and accounts, Mr. S noticed that the books of accounts were displaying only a small amount as profit despite a huge turnover. When, he asked other partners about this fact, then Mr. Y told him that one of the major clients, Mr. T refused to pay huge amount of fees. Mr. S decided to sue Mr. T for recovery of fees and sent a notice for the same. Mr. T argued that Mr. S cannot sue him because he has not given notice of remaining a partner on attaining majority.

With reference to provisions of the Indian Partnership Act, 1932 decide:

(i) Whether Mr. X can retire and introduce Mr. S (minor) as a partner?

(ii) Whether Mr. S has right to inspect books of accounts?

(iii) Whether Mr. S has authority to sue Mr. T, on non-payment of fees?

(7 Marks)

(b) Mr. RM was engaged in the trading of handloom items with his wife. One of their friends suggested that they should form a private limited company. By corporatizing their business, they could gain better recognition and even explore export opportunities.

They established M/s RM Private Limited with both as the sole members. They got the work orders on job basis from local artisans, sold their products in the Indian market, and exported them as well. The company also secured a line of credit from the bank amounting to ₹30 lakhs.

Tragically, Mr. RM met with an accident and passed away. Now Mrs. RM was the only member in the private limited company. A family friend suggested including her brother as a member, but she declined. Instead, she decided to convert the private limited company into a One Person Company (OPC) and nominate her brother, Mr. AK, who is currently employed in London, UK.

Examine with reference to the Companies Act, 2013:

(i) Whether Mrs. RM's decision to convert the private limited company into a One Person Company (OPC) is legally valid; and

(ii) When Mrs. RM's decision to nominate her brother Mr. AK, as a nominee, is not legally valid? ***(7 Marks)***

(c) A, B, and C act as co-sureties for a loan of ₹4,00,000/- taken by R from XYZ Bank. There are three bonds specifying different liability limits for each surety such as A's liability is limited to ₹ 1,00,000/-, B's liability is limited to

₹ 2,00,000/- and C's liability is limited to ₹ 4,00,000/-. Due to financial difficulties, R defaults on the loan, and the bank seeks to recover the amount from the sureties.

As per the provisions of the Indian Contract Act, 1872,

(i) Analyse and determine the amount each co-surety (A, B, and C) is liable to pay, and

(ii) What will be your answer if the loan amount is ₹ 6,00,000/-instead of ₹ 4,00,000/-? ***(6 Marks)***

Answer

(a) (i) As per the provisions of Section 32 of the Indian Partnership Act, 1932, (the Act) 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.

However, a minor cannot be admitted as a partner in a firm. A minor can only be admitted to the benefits of partnership with the consent of all partners.

As the partnership is at will, Mr. X can retire from the firm by giving notice in writing to all the other partners of his intention to retire and Mr. S, being a minor, can only be admitted to the benefits of partnership under Section 30 of the Act with the consent of all the existing partners.

(ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever is later, the minor partner has to decide whether he shall remain as a partner or leave the firm.

If he has elected not to become a partner, he may give a public notice in this regard and failure to do so, he shall become a partner in the firm after the expiry of the said 6 months.

As Mr. S failed to give the public notice whether he elected to become or not to become a partner of the firm, after expiry of 6 months from obtaining the majority, he will become the partner of the firm.

As per Section 12(d) of the Indian Partnership Act, 1932, every partner has the right to access and to inspect and to copy any of the books of the firm.

Therefore, Mr. S, in the given case, in the capacity of the being a partner by 5th of October, 2023, have right to inspect the books of accounts. The right, must, however, be exercise Bonafide.

(iii) According to Section 69 of the Act, the firm or any other person on its behalf cannot bring an action against a third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

(iii) ALTERNATE ANSWER:

Within 6 months of attaining majority or on obtaining knowledge that a minor partner had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner, he may give public notice that he has elected not to become partner, and such notice shall determine his position with regard to the firm.

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

As Mr. S became major on 5th January 2023 and after six months i.e. 5th July 2023, he shall become a partner in the firm as he has not given notice of not becoming a partner.

Therefore, Mr. S has authority to sue Mr. T on non-payment of fee as no notice is required for remaining as a partner on attaining majority.

(b) (i) A Private Limited Company can be converted into an OPC if it meets the eligibility criteria under Section 2(62) of the Companies Act, 2013.

An OPC can have only one member and the Memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the Company.

The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the registrar.

No person shall be eligible to become nominee in more than one OPC.

Further only a natural person who is an Indian citizen whether resident in India or otherwise-

- shall be eligible to incorporate a One Person Company;
- shall be a nominee for the sole member of a One Person Company.

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In view of the above, in the given case, Mrs. RM's decision to convert the Company into an OPC is legally valid.

(ii) Nominating Mr. AK may not be valid if he does not meet the residency requirement (i.e., if he has not stayed in India for at least 120 days in the preceding financial year). In that case, Mrs. RM must nominate another Indian resident.

(ii) ALTERNATE ANSWER

Here, Mrs. RM's decision to nominate her brother Mr. AK, as a nominee is not legally valid in the case where he has obtained the foreign citizenship being in employment in London UK.

Note: Since nothing is specified as regards the citizenship of Mr. AK, a benefit of doubt may be given to the students who assumes that Mr. AK has obtained the UK citizenship being therein employment. In that case he may lose the Indian Citizenship and shall be disqualified to be nominated as a nominee.

(c) Co-sureties liable to contribute equally (Section 146 of the Indian Contract Act, 1872): Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

Liability of co-sureties bound in different sums (Section 147): The principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

In the instant case,

(i) A, B and C act as co-sureties for a loan of ₹ 4,00,000 taken by R from XYZ bank. As per specific bonds by each of them, A's liability is limited to ₹ 1,00,000, B's liability is limited to ₹ 2,00,000 and C's Liability is limited to ₹ 4,00,000. R makes the default of ₹ 4,00,000.

Based on the above provisions, A, B and C were liable for contribution subject to maximum limit fixed as per their specific bonds.

Therefore, A is liable to pay 1,00,000 rupees, and B and C ₹ 1,50,000 rupees each.

(ii) If the loan amounts to ₹ 6,00,000, A is liable to pay 1,00,000 rupees, B is liable to pay ₹ 2,00,000 and C is liable to pay 3,00,000.

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Question 4

(a) *With reference to provisions of the Indian Contract Act, 1872, analyse the given situations and answer each of the following questions:*

(i) *Mr. X visited a Cosmo Mega Mall at Nagpur, which has a variety of items for day-to-day use. The mall has a self-service system. Mr. X took a basket, picked up ten different items of his choice, and reached the cashier for payments. The cashier accepted the price of nine items but did not accept the price of remaining one item which was at the highest price of ₹10,050/- among the ten items.*

Decide as per the provisions of the Indian Contract Act, 1872 whether the Cosmo Mega Mall be compelled to sell the said article to Mr. X.

(4 Marks)

(ii) *Mr. AT completed his M. Tech. qualification in April 2022. He got married with Ms. Priya in November 2022. He got an appointment as Technical Consultant in a very renowned company in USA on 2nd February 2023. He promised his wife that he will send ₹30,000/- per month for her daily routine expenses. Mr. AT went to USA on 25th October 2023. He never sent any money to his wife. Mrs. Priya was not in a position to meet her daily expenses. She was facing severe financial issues regarding rent and other maintenance expenses. On 20th March 2024 during her telephonic discussion with Mr. AT, she came to know that he would never send her money. Due to her financial hardships, she decided to file a suit against him for ₹7,50,000/-. Whether Mrs. Priya would be able to recover the above amount according to provisions of the Indian Contract Act, 1872?*

(3 Marks)

(b) *"Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery." Classify the different types of Negotiable instruments according to manner in which it is made as per the provisions of the Negotiable Instrument Act, 1881.* ***(7 Marks)***

(c) *Define Law and explain various sources of Law.* ***(6 Marks)***

Answer

(a) (i) **Invitation to Offer:** The offer should be distinguished from an invitation to offer. In terms of Section 2(a) of the Indian Contract Act, 1872, an offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it.

Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of items with a price in it in a self-service system is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

In this case, Mr. X by selecting some items and approaching the cashier for payment simply made an offer to buy the items selected by him. If the cashier does not accept the price, Mr. X cannot compel him to sell.

Accordingly, in view of the above, Mr. X cannot compel the Cashier / Cosmo Mega Mall to sell the 10th article.

(ii) As per Section 2(h) of the Indian Contract Act, 1872 a contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation which means duly enforceable by law.

As per Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given case, Mr. AT and Mrs. Priya had not entered into an agreement which is legally enforceable by law.

As per the facts of the case, Mr. AT agreed to pay to his wife Mrs. Priya ₹ 30,000 per month while he was abroad. Mr. AT failed to pay the promised amount. Mrs. Priya sued him for the recovery of the amount.

In view of the above, Mrs. Priya cannot recover any amount as it was a social agreement and the parties did not intend to create any legal relationships.

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(b) Negotiable Instruments: Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery.

The property in such an instrument pass to a Bonafide transferee for value.

Classification of Negotiable Instruments according to manner in which it is made in terms of the Negotiable Instruments Act, 1881 (the Act).

(1) **"Bearer Instrument" and "Order Instrument" [Section 13]**

Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words "or bearer" or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.

(2) **"Inland Instrument" and "Foreign Instrument" [Sections 11 & 12]**

"Inland Instrument": A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

"Foreign Instrument": A foreign instrument is one which is not an inland instrument.

(3) **Inchoate and Ambiguous Instruments**

Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ endorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete.

Ambiguous Instrument: As per Section 17, where an instrument may be construed either as a promissory note or bill of exchange,

the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

(c) What is Law?

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

Sources of Law

The main sources of law in India are:

(i) the Constitution,

(ii) the Statutes or Laws made by Parliament and State Assemblies,

(iii) Precedents or the Judicial Decisions of various Courts and in some cases, established Customs and Usages.

The elected representatives of the people to the Parliament and to the Legislative Assemblies of various States make laws in the Parliament or in the State Assemblies.

The Constitution of India, 1950 is the foremost law that deals with the framework within which our democratic system works, and our laws are made for the people, by the people.

The Constitution also provides for and protects certain Fundamental Rights of citizens.

It also lays down Fundamental duties as well as the powers and duties of Governments, both Central and State.

The laws in India are interconnected with each other forming a hybrid legal system.

The people who wrote the Constitution decided to divide the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List.

A matter would become the subject matter for Central Law or a State Law depending on the List.

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Question 5

(a) (i) *Ms. S visits an electronic store and asks for a laptop suitable for high-end graphic design work. The salesman recommends a specific model, assuring her that it will meet her needs. Relying on this advice, Ms. S purchases the laptop. However, after using it, she realises that the laptop lacks the necessary processing power and graphics capability for her work.*

Can Ms. S take legal action against the seller under the Sale of Goods Act, 1930? Justify your answer. ***(3 Marks)***

(ii) *Mr. S was going through severe financial hardships. His wife suggested to take a gold loan. On 15th January 2025, he pledged his wife's jewellery worth ₹ 30 lakhs with one of his friend Mr. R and took a loan of ₹ 25 lakhs. On 17th January 2025, he sold total jewellery for ₹ 28 lakhs to M/s RL Jewellers Pitampura. The jeweller purchased it in good faith without knowing the fact that the jewellery was already pledged. After all this, Mr. S declared himself insolvent. When Mr. R came to know about this, he filed a suit against M/s RL Jewellers. But M/s RL Jewellers contended that they were unaware about pledge. With reference to provisions of the Sale of Goods Act, 1930 what is the remedial action available to Mr. R?* ***(4 Marks)***

(b) (i) *M/s SR Enterprises is a well-known trading firm. Mr. AM, a former partner of the firm, had retired in 2022 but never made any public announcement about his retirement. In 2024, Mr. R, a supplier, entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm. He relied on Mr. AM's past association with the firm and extended a credit line to the firm. When M/s SR Enterprises defaulted on payment, Mr. R, demanded that Mr. AM also be held liable for the dues. Mr. AM refused, stating that he was no longer a partner in the firm and had no involvement in the firm's affairs for long time. Examine with reference to the provisions of the Indian Partnership Act, 1932 whether Mr. AM can be held liable for the firm's above debt.* ***(3 Marks)***

(ii) *M/s LMP & Associates, a partnership firm engaged in carpet manufacturing and exporting, was initially managed by senior partners L, M, and P. On 25th August, 2022, the firm admitted Mr. G, an expert in*

carpet manufacturing, as a partner. However, on 10th January, 2024, Mr. G was accused of unauthorized activities and subsequently expelled from the partnership with the unanimous approval of the remaining partners.

With reference to the provisions of the Indian Partnership Act, 1932, answer each of the following:

(1) Examine whether action by the partners was justified or not?

(2) What are the factors which should be kept in mind prior to expelling a partner from the firm by other partners? ***(4 Marks)***

(c) State with reference to the provisions of the Indian Contract Act, 1872 whether the following are True or False with justification.

(i) The pledge of documents of title to goods by a mercantile agent with the consent of an owner is invalid pledge.

(ii) A appoints B as his agent to sell A's land. Subsequently, under the authority of A, B appoints C as his agent. Later on, A revokes the authority of B, but not that of C. Consequently, the authority of C cannot be terminated.

(iii) The contract of life insurance is not fully covered under the contract of indemnity. ***(6 Marks)***

Answer

(a) (i) Fitness as to Quality or Use [Section 16 (1) of the Sale of Goods Act, 1930]

According to Section 16(1) of the Sale of Goods Act, 1930 there is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

1. The buyer should have made known to the seller the particular purpose for which goods are required.
2. The buyer should rely on the skill and judgement of the seller.
3. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

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In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be used only for one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

In the instant case, Ms. S clearly informed the Seller that she needed a laptop for high end graphic design work. The Seller recommended a model, creating an implied condition that it would be suitable for that purpose. The laptop failed to meet the required performance standards, breaching the implied condition of fitness.

Ms. S can take legal action against the seller. The seller breached the implied condition as to fitness for purpose, since the laptop recommended was not suitable for high-end graphic design work.

(ii) According to Section 30(1) of the Sale of Goods Act, 1930, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier.

A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.

Therefore, in the instant case, RL Jewellers have got good title over the jewellery sold by Mr. S and Mr. R cannot take any action against RL Jewellers. However, Since Mr. S has violated the condition of pledge, he can claim only from the property of Mr. S as he has become insolvent.

(ii) ALTERNATE ANSWER

Condition as to Title [Section 14(a)]: In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that

(a) in case of a sale, he has a right to sell the goods, and

(b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.

In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

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.

In every agreement of sale, it is an implied condition that the Seller will have a right to sell the goods at the time when the property is to pass.

In the above case Mr. S was not real owner as he already pledges the jewellery to Mr. R.

On the other hand, it is implied warranty that the goods will be free from any charge and encumbrance. In above case Mr. S has not disclosed encumbrance to Jewellers and sold jewellery.

Thus, M/s RL Jewellers will not be liable to return the jewellery for which he already paid. Mr. R can file a suit against Mr. S. But here in this situation S declared himself insolvent. So, Mr. R can recover from property of Mr. S only.

(b) (i) Retirement of a Partner (Section 32 of the Indian Partnership Act, 1932): 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.

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.

However, a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

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In the instant case, Mr. AM can be held liable for the firm's debt as no public notice was given of his retirement and Mr. R entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm.

(i) ALTERNATE ANSWER:

Partner by Holding Out (Section 28):

Partnership by holding out is also known as partnership by estoppel. When a person represent himself, or knowingly permits himself, to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

The Rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

In the instant case, Mr. AM, despite retiring, did not publicly notify his disassociation from the firm. Since, Mr. R, the supplier, believed in good faith that Mr. AM was still a partner and extended credit based on this assumption, Mr. AM can be held liable as a "Partner by holding out".

(ii) (1) Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932): A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

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

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

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

Action by the partners of M/s LMP & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by

unanimous approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. Provided, a proper notice and opportunity of being heard has been given to Mr. G.

(2) Factors to be kept in mind before expelling a Partner

The following are the factors to be kept in mind prior to the expelling of a partner from the firm by other partners:

(a) the power of expulsion must have existed in a contract between the partners;

(b) the power has been exercised by a majority of the partners; and

(c) it has been exercised in good faith.

(c) (i) The given statement is False

Justification: According to Section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Provided such Pledge shall be valid as if were made with the authority of the owner of goods and the Pawnee has acted in good faith and has no notice that the Pawnor has no authority to pledge.

(ii) The given statement is False

Justification: According to Section 210 of the Indian Contract Act, 1872, the termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him. In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub agent. Thus, when A revokes the authority of B(agent), it results in termination of authority of sub agent appointed by B i.e. C (sub-agent).

(iii) The given statement is True

Justification: As per Section 124 of the Indian Contract Act, 1872, the term "Contract of Indemnity" is defined as "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other

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person." In case of a contract of insurance, the loss may happen due to natural calamities, and not due to conduct of the promisor or any person. Thus, a contract of Life Insurance is not contracts of indemnity as per definition given.

Question 6

(a) (i) Mr. K draws a bill of exchange payable 60 days after sight to Mr. J. Mr. J holds the bill for 30 days before presenting it to Mr. N, the drawee, for acceptance. Mr. N accepts the bill upon presentation. Decide as per the provisions of the Negotiable Instruments Act, 1881, when does the maturity period of the bill commence? ***(3 Marks)***

(ii) A promissory note is made payable at a specific place on a fixed date. The holder, Mr. Mohan presents the note for payment two days after the due date because of unforeseen circumstances.

Decide each of the following as per the provisions of the Negotiable Instruments Act, 1881:

(A) Does the delay in presentation affect Mr. Mohan's right to recover the amount? ***(2 Marks)***

(B) Under what circumstances can a delay in presentation be excused according to the Act. ***(2 Marks)***

(b) Consent is said to be free when it is not caused by 'Fraud'. According to provisions of the Indian Contract Act, 1872, answer each of the following:

(i) What do you mean by 'Fraud'?

(ii) What would be effect of fraud upon validity of a contract and state the instances in which a contract is not voidable? ***(6 Marks)***

OR

(b) What is the meaning of the term Quantum Meruit? Explain any four cases in which a claim for quantum meruit can arise. ***(6 Marks)***

(c) Contract of sale resembles with contracts of hire-purchase. However, sale is distinguished from hire-purchase. Explain hire-purchase agreement and state any five points of distinction between Sale and Hire-purchase.

(7 Marks)

Answer

(a) (i) According to Section 61 of the Negotiable Instruments Act, 1881, when a bill is made payable "after sight", the maturity period is calculated from the date of acceptance of the bill by the drawee. The period of holding the bill by the payee before presenting it for acceptance does not affect the commencement of the maturity period.

In the present case, Mr. K draws a bill payable 60 days after sight in favour of Mr. J. Although Mr. J keeps the bill for 30 days before presenting it to Mr. N, the drawee, the maturity period will not begin until the date on which Mr. N accepts the bill.

Therefore, the maturity period of the bill commences from the date of acceptance by Mr. N.

(ii) (A) No, Mr. Mohan's right to recover the amount does not get affected due to the delay in presentation of the promissory note two days after the due date because of unforeseen circumstances as it is provided under Section 75A of the Negotiable Instruments Act, 1881.

(A) ALTERNATE ANSWER

Yes, the delay in presentation could affect Mr. Mohan's right to recover the amount. According to section 64 of the Act, a promissory note must be presented for payment at maturity. Failure to do so may discharge the maker from liability to the extent of any loss caused by the delay.

(B) Excuse for delay in presentment for acceptance or payment (Section 75A)

Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.

(b) (i) Meaning of Fraud: (Section 17 of the Indian Contract Act, 1872): 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an

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intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

(ii) Effect of Fraud upon validity of a contract: When the consent to an agreement in caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

(1) He can rescind the contract within a reasonable time.

(2) He can sue for damages.

(3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Exception: In the following cases, contract is not voidable:

(i) If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.

(ii) A fraud which did not cause the consent of the party to agreement.

OR

(b) Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at the time of breach done only a part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.

For the application of this doctrine, two conditions must be fulfilled:

(i) It is only available if the original contract has been discharged.

(ii) The claim must be brought by a party not in default.

The claim for quantum meruit arises in the following cases:

(a) When an agreement is discovered to be void or when a contract becomes void.

(b) When something is done without any intention to do so gratuitously.

(c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.

(d) When one party abandons or refuses to perform the contract.

(e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

(f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

(c) Contract of sale resembles with contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire Purchase Agreements are governed by the Hire-purchase Act, 1972.

The term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

(a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

(b) The property in the goods is to pass to such person on the payment of the last of such instalments, and

(c) Such person has a right to terminate the agreement at any time before the property so passes.

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The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Basis of Difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser until he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

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STUDENTS SPEAK

AIR 26
SURAJ BAKLIWAL
ST. XAVIERS COLLEGE

Studying from niraj sir was an amazing experience. He is unlike all the teachers who have taught me. Sir is always ready for help no matter what the problem is, no matter what time itis. He has given me personal guidance throughout the course and the general teacher-student relation has become more like friendship. The study material given by sir is fully exhaustive and second to none. In addition to the classroom teaching , sir also motivated us alot and didn't only show us the dream of getting a rank but also helped us in every way possible as if it were a dream of his own. I would like to thank sir for everything and suggest everyone to take his classes to experience the excellence!

I m quite grateful to be a part of NAE family where I got to meet many new people and learn from extremely qualified teachers. Niraj sir helped me to shape my dream of becoming an AIR. Without his support it would have been very difficult. At each and every moment he supported me and encouraged me to improve myself. I m really thankful to him.

AIR 27
AMAN CHOWDHARY
ST. XAVIERS COLLEGE

AIR 31
RAHUL AGARWAL
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Association with NAE was a great experience. Personal attention and doubt clearing (24×7) on any topic makes the faculty unique on its own. One feels good when you have a teacher as a friend. Focus on life examples supports in concept clarity and always motivating you to do more and better

Joining here was a very memorable experience for me. Niraj Sirwas not only my teacher, but a mentor for life. He is more of a friend to me. The regular tests helped me to identify my weaknesses and work upon them. The conceptual clarity they provided, helped me to clear my CAfoundation exam and secure an All India Rank.

AIR 28
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STUDENTS SPEAK

AIR 34
YASH DAMANI
ST. XAVIERS COLLEGE

"An opportunity which everyone should capitalize on", that's what learning things from Niraj sir is. From late night calls to endless doubts I always knew that sir was available to help me get things back on track. With the overwhelming love I have got for the entire 6 months of my preparation time, I really discovered a friend in him more than a teacher. Dont know about others, but I will miss your classes and will keep cherishing the memories I have made there. To end things, I would just want to say that I'm thankful to sir because whatever I've achieved today is all because of the motivation I've been receiving from him throughout this journey.

Its been all in all a great experience learning from sir. He has been a great guide and mentor throughout my journey towards excellence. I am obliged to sir for all the contribution he has made. I will always keep learning something from you sir.

AIR 38
HARSHAT SINGH SALUJA
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AIR 44
DEVANSH DAMANI
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Stepping into the line of a professional career was a very new and exciting experience. It seemed that the boards exams was just a trailer while the movie is about to come. He is mentor not just for exams but for life who were instrumental in shaping my career. He kept me motivated throughout the 6 months of preparation. From books to revision papers to mock tests and obviously there vast knowledge, all together are more than sufficient for the preparation. The best thing in his teaching was the references to the practical world, which was a bonus for us. After all, their faith and dedication for us helped me achieve an AIR which was earlier only a dream. I greatly express my gratitude towards him.

It was my great opportunity and experience to study in this institute. He is very friendly with the students. He provides proper guideline and notes for each and every chapter. As a result of his hard efforts while teaching and preparing me for CA Foundation exam, I got 48th All India Rank

AIR 48
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Niraj sir is the best sir I ever meet .... He is always ready to help in any situations 24X7 . he makes our concept clear , base strong along with cheering up and removing ur tension for exams by his motivation #togetherwecan . he not only support in studies but support morally . At the exam time sir provide personal attention , important updates , voice notes and precise notes at last moment along with very imp. Pdfs which helped a lot ... Even more effort for online and outsider students by giving his best and make them feel like offline only ... Thank you so much sir ... No words to thank you for what you did for me ....
Hats off sirr for your supper effort !!!

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Well firstly, I am grateful to be a part of NAE.
It is not just like any other institute or tution which we usually see in every area rather it is a family .
Talking about the head of the Family Niraj sir he is a gem of person who was always there for you even at 2:40 am.
Honestly speaking Sir was there for us like a elder brother and a mentor from the day very first we met him and you can learn a lot from sir apart from the course.
Lastly,One thing which I personally learned from sir was giving personal attention to everyone.

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One of my best decision is to choose NAE for C
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A teacher like Niraj Sir was just a dream for me that come true . His teaching skills and knowledge about everything is just awesome . More than a teacher he is our true friend a guidance in life that guides you in every aspect and an inspiration too .NAE is not just an institution, It's like our second home .#NAE FAMILY

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Hello everyone, I am elated to share my experience with the NAE. It was always my dream to become a CA and I am on the halfway of my dream just because of the support and guidance from the Niraj sir.
His commitment to providing every lecture with so much ease that it never feels like it was hard.The personalized attention and guidance I have received from Niraj Sir have been instrumental in my understanding of complex concepts, making the learning process not only insightful but also incredibly enjoyable.
His personality is so amazing that it always encourages the people around him to do the best thing in their life.
He is like a role model to me, who always encouraged me through out this rigorous yet the most beautiful journey.

Hiranmayee Revanur
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Apart from being an excellent teacher, Niraj sir is also a great mentor. He is always available to listen to the student's grievances and guide them through it, I am extremely grateful to him. Best teacher no doubt

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I had a fantastic experience at NAE. Sir is highly knowledgeable and supportive, always going the extra mile to ensure students understood complex concepts. The study materials are comprehensive and well-structured, making exam preparation efficient. Additionally, the regular mock tests helps me gauge my progress and build confidence. The institute's conducive learning environment and the personalized attention provided by sir is instrumental in my success. I highly recommend NAE to anyone aspiring to excel in their CA foundation exam.

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Niraj Agarwal is a Chartered Accountant, Company Secretary, Cost & Management Accountant. He is an All India Rank Holder in all the 3 courses. He has graduated from St. Xavier's College, Kolkata and holds a Master's degree in Commerce too. He believes that learning is a continuous process and hence he is also a ICAI certified IFRS professional, UGC NET Qualified, an Associate from Insurance Institute of India and completed 5 papers of Actuarial Science. He is also a visiting Faculty and Student Counsellor at Institute of Chartered Accountants of India, Kolkata and Secretary at ICAS, Kolkata

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