PAPER – 2: BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

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

The Indian Contract Act, 1872

2. Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872?

3. Sarthak is employed as a cashier on a monthly salary of ₹ 50,000 by ABC bank for a period of three years. Mohit gave surety for Sarthak's good conduct. After nine months, the financial position of the bank deteriorates. Then Sarthak agrees to accept a lower salary of ₹ 40,000 per month from the Bank. Two months later, it was found that Sarthak had misappropriated cash from the time of his appointment. What is the liability of Mohit taking into account the provisions of the Indian Contract Act, 1872?

4. Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ₹ 2,500 per day. However, after a month, Rahul willfully absents

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

(i) Does the hotel have the right to end the contract?

(ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?

(iii) In which of the case – (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach?

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

(i) Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.

(ii) Seizure of goods by customs authorities.

6. Mr. Sanjay Kothari was a big businessman having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met an accident, and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

7. (i) Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

(ii) Mr. Sooraj promises Mr. Manoj to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can

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Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

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

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

The Sale of Goods Act, 1930

9. Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, ask the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

   (a) State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?

   (b) Will your answer be different if Prakash does not taste the sweets?

10. Akansh purchased a Television set from Arvind, the owner of Gada Electronics on the condition that first three days he check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arvind demands the price of a Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?

11. Mr. Arun contracted to sell his swift car to Mr. Nikhil. Both missed to discuss the price of the said swift car. Later, Mr. Arun refused to sell his swift car to Mr. Nikhil on the ground that the agreement was void, being uncertain about the price. Does Mr. Nikhil have any right against Mr. Arun under the Sale of Goods Act, 1930?

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

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

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

The Indian Partnership Act, 1932

13. Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹ 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

14. Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as a penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹ 3000 to Mr. John?

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15. X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932?

16. A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above.

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

The Limited Liability Partnership Act, 2008

18. A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities.

The Companies Act, 2013

19. Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract,

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he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

20. AK Private Limited has borrowed ₹ 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ₹ 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

21. Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.

The Negotiable Instruments Act, 1881

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

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

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SUGGESTED ANSWERS/HINTS

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

The **functions** of judiciary system of India are:

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

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

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

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

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

3. According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and

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creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

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

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

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

(a) To terminate the contract

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

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

In the given case,

(i) Yes, the hotel has the right to end the contract with Rahul, the DJ.

(ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

5. As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

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

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(i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Vikas, Section 148, of the Indian Contract Act, 1872 shall not be applicable.

(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists, and section 148 is applicable.

6. Section 25 of the Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

In the instant case, the transfer of house made by Mr. Sanjay Kothari on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable, and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

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

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

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

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

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary

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intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

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

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

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

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

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.

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4. Such a right is available against specific person(s) and not against the whole world.

5. A suit for its breach may be filed in the same way as in case of a complete contract.

9. By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.

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

10. According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

(i) when he signifies his approval or acceptance to the seller,

(ii) when he does any other act adopting the transaction, and

(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

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

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

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

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

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

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

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

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

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

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

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

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

(c) where the buyer becomes insolvent.

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

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

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

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

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

14. According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of

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a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:

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

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

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

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

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

16. According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of

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the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

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

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

The rights of such a transferee are as follows:

(1) During the continuance of partnership, such transferee is not entitled

(a) to interfere with the conduct of the business,

(b) to require accounts, or

(c) to inspect books of the firm.

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

(2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

(a) to receive the share of the assets of the firm to which the transferring partner was entitled, and

(b) for the purpose of ascertaining the share,

he is entitled to an account as from the date of the dissolution.

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

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

	Basis	LLP	Partnership firm
1.	**Regulating Act**	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	**Body corporate**	It is a body corporate.	It is not a body corporate.
3.	**Separate legal entity**	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	**Creation**	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	**Registration**	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	**Perpetual succession**	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.

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		but its existence continues forever.	
7.	**Name**	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	**Liability**	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	**Mutual agency**	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	**Designated partners**	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	**Common seal**	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	**Legal compliances**	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	**Annual filing of documents**	LLP is required to file: (i) Annual	Partnership firm is not required to file any annual document with

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

19. It was decided by the court in the case of *Gilford Motor Co. Vs. Horne*, if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

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

20. This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is

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therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

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

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

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

(ii) Remedy available to BK Finance Limited:

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

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

(i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(ii) conducts any business activity in India in any other manner.

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

22. According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of

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exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

23. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

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

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PAPER – 2: BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

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

The Indian Contract Act, 1872

2. Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872?

3. Sarthak is employed as a cashier on a monthly salary of ₹ 50,000 by ABC bank for a period of three years. Mohit gave surety for Sarthak's good conduct. After nine months, the financial position of the bank deteriorates. Then Sarthak agrees to accept a lower salary of ₹ 40,000 per month from the Bank. Two months later, it was found that Sarthak had misappropriated cash from the time of his appointment. What is the liability of Mohit taking into account the provisions of the Indian Contract Act, 1872?

4. Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ₹ 2,500 per day. However, after a month, Rahul willfully absents

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

(i) Does the hotel have the right to end the contract?

(ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?

(iii) In which of the case – (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach?

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

(i) Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.

(ii) Seizure of goods by customs authorities.

6. Mr. Sanjay Kothari was a big businessman having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met an accident, and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

7. (i) Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

(ii) Mr. Sooraj promises Mr. Manoj to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can

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Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

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

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

The Sale of Goods Act, 1930

9. Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, ask the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

   (a) State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?

   (b) Will your answer be different if Prakash does not taste the sweets?

10. Akansh purchased a Television set from Arvind, the owner of Gada Electronics on the condition that first three days he check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arvind demands the price of a Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?

11. Mr. Arun contracted to sell his swift car to Mr. Nikhil. Both missed to discuss the price of the said swift car. Later, Mr. Arun refused to sell his swift car to Mr. Nikhil on the ground that the agreement was void, being uncertain about the price. Does Mr. Nikhil have any right against Mr. Arun under the Sale of Goods Act, 1930?

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

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

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

The Indian Partnership Act, 1932

13. Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹ 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

14. Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as a penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹ 3000 to Mr. John?

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15. X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932?

16. A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above.

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

The Limited Liability Partnership Act, 2008

18. A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities.

The Companies Act, 2013

19. Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract,

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he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

20. AK Private Limited has borrowed ₹ 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ₹ 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

21. Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.

The Negotiable Instruments Act, 1881

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

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

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SUGGESTED ANSWERS/HINTS

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

The **functions** of judiciary system of India are:

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

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

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

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

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

3. According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and

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creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

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

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

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

(a) To terminate the contract

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

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

In the given case,

(i) Yes, the hotel has the right to end the contract with Rahul, the DJ.

(ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

5. As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

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

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(i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Vikas, Section 148, of the Indian Contract Act, 1872 shall not be applicable.

(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists, and section 148 is applicable.

6. Section 25 of the Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

In the instant case, the transfer of house made by Mr. Sanjay Kothari on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable, and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

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

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

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

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

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary

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intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

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

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

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

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

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.

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4. Such a right is available against specific person(s) and not against the whole world.

5. A suit for its breach may be filed in the same way as in case of a complete contract.

9. By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.

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

10. According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

(i) when he signifies his approval or acceptance to the seller,

(ii) when he does any other act adopting the transaction, and

(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

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

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

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

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

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

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

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

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

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

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

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

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

(c) where the buyer becomes insolvent.

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

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

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

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

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

14. According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of

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a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:

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

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

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

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

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

16. According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of

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the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

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

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

The rights of such a transferee are as follows:

(1) During the continuance of partnership, such transferee is not entitled

(a) to interfere with the conduct of the business,

(b) to require accounts, or

(c) to inspect books of the firm.

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

(2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

(a) to receive the share of the assets of the firm to which the transferring partner was entitled, and

(b) for the purpose of ascertaining the share,

he is entitled to an account as from the date of the dissolution.

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

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

	Basis	LLP	Partnership firm
1.	**Regulating Act**	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	**Body corporate**	It is a body corporate.	It is not a body corporate.
3.	**Separate legal entity**	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	**Creation**	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	**Registration**	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	**Perpetual succession**	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.

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		but its existence continues forever.	
7.	**Name**	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	**Liability**	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	**Mutual agency**	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	**Designated partners**	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	**Common seal**	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	**Legal compliances**	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	**Annual filing of documents**	LLP is required to file: (i) Annual	Partnership firm is not required to file any annual document with

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

19. It was decided by the court in the case of *Gilford Motor Co. Vs. Horne*, if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

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

20. This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is

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therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

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

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

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

(ii) Remedy available to BK Finance Limited:

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

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

(i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(ii) conducts any business activity in India in any other manner.

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

22. According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of

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exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

23. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

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

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PAPER – 2: BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

1. What is Law and what is the process of making a law?

The Indian Contract Act, 1872

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

   (i) Rahul contracts with Bhanu (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the factory catches fire and everything is destroyed.

   (ii) A coolie in uniform picks up the luggage of Rohan to be carried out of the railway station without being asked by Rohan and Rohan allows him to do so.

   (iii) Obligation of finder of lost goods to return them to the true owner.

3. Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of ₹ 1,00,000 from Bhavesh for payment of his college fees and to purchase books and agreed to repay by 31st December, 2023. Amit possesses assets worth ₹ 9 lakhs. On due date, Amit fails to pay back the loan to Bhavesh. Bhavesh now wants to recover the loan from Amit out of his (Amit's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Bhavesh would succeed.

4. Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to

Mr. Shyam, to apply for voluntary retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ₹ 10 Lakhs as consideration to Mr. Shyam to induce him to retire.

Mr. Shyam 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 the Indian Contract Act, 1872?

5. What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:

   (a) Sunil promised to bring back Jatin to life again.

   (b) Aman agreed to sell 50 kgs of apples to Raman. The loaded truck left for delivery on 15th March but due to riots in between reached Raman on 19th March due to which the apples were rotten.

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

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

6. Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered to the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?

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

8. 'Sooraj' guarantees 'Vikas' for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March 2023. 'Vikas' supplied goods of ₹ 30,000 on 01.03.2023 and of ₹ 20,000 on 03.03.2023 to 'Nikhil'. On 05.03.2023, 'Sooraj' died in a road accident. On 10.03.2023, being ignorant of the death of 'Sooraj', 'Vikas' further supplied goods of ₹ 40,000. On default in payment by 'Nikhil' on due date, 'Vikas' sued legal heirs of 'Sooraj' for recovery of ₹ 90,000. Describe, whether legal heirs of 'Sooraj' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act, 1872.

   What would be your answer, if the estate of 'Sooraj' is worth ₹ 45,000 only?

9. Mr. Stefen owns a chicken farm near Gurugram, where he breeds them and sells eggs and live chicken to retail shops in Gurugram. Mr. Flemming also owns a similar farm near Gurugram, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel, so he had pledged his farm to Mr. Stefen for one year and received a deposit of ₹ 25 lakhs and went away. At that point of time, the stock of live birds was 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs.

   After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

   Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

   State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

The Sale of Goods Act, 1930

10. AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes, customized as per the requirement of the customers. They dealt with Silk, Organdie, cotton, khadi, chiffon and many other different varieties of cloth.

    Mrs. Reema, a customer, came to the shop and asked for a specific type of cloth suitable for making a suit for her daughter's birthday. She

specifically mentioned that she required cotton silk cloth which is best suited for the purpose.

The Shop owner agreed and arranged the cloth pieces cut into as per the buyers' requirements.

When Reema went to the tailor to get the suit stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It was heavily starched and not suitable for making the suit that Reema desired for. The Tailor asked Reema to return the cotton organdie cloth as it would not meet his requirements.

The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold.

With reference to the doctrine of "Caveat Emptor' explain the duty of the buyer as well as the seller. Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement?

11. Samuel purchased a Television set from Arun, the owner of Gada Electronics, on the condition that for the first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arun demands the price of Television set from Samuel. Whether Samuel is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?

12. Suraj sold his car to Sohan for ₹ 1,75,000. After inspection and satisfaction, Sohan paid ₹ 75,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the grounds that the car was not in good condition. Advise Suraj as to what remedy is available to him against Sohan under the Sale of Goods Act, 1930.

13. Akash purchased 100 Kgs of wheat from Bhaskar at ₹80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the

contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930.

The Indian Partnership Act, 1932

14. Sahil, Amit and Kunal were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2023, one of the partners, Mr. Kunal died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25th May 2023, when Kunal was also alive.

    Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm?

15. State whether the following are partnerships under the Indian Partnership Act, 1932:

    (i) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.

    (ii) Two firms each having 12 partners combine by an agreement into one firm.

    (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 ₹ 5000 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.

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

The Limited Liability Partnership Act, 2008

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

The Companies Act, 2013

18. A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the artwork of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April 2021 onwards.

    However, on 30th September 2023, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act, 2013.

    Discuss what powers can be exercised by the Central Government against ABC club, in such a case?

19. HP Polytech Limited has a paid-up share capital divided into 6,00,000 equity shares of ₹ 100 each. 2,00,000 equity shares of the company are held by the Central Government and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether HP Polytech Limited can be treated as a Government Company.

20. Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

The Negotiable Instruments Act, 1881

21. What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881.

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

SUGGESTED ANSWERS/HINTS

1. 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.

The Process of Making a Law

(i) When a law is proposed in parliament, it is called a Bill.

(ii) After discussion and debate, the law is passed in Lok Sabha.

(iii) Thereafter, it has to be passed in Rajya Sabha.

(iv) It then has to obtain the assent of the President of India.

(v) Finally, the law will be notified by the Government in the publication called the Official Gazette of India.

(vi) The law will become applicable from the date mentioned in the notification as the effective date.

(vii) Once it is notified and effective, it is called an Act of Parliament.

2. (i) It is a void contract.

Void Contract: Section 2 (j) of the Indian Contract Act, 1872 states as follows: *"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"*. Thus, a void contract is one which cannot be enforced by a court of law.

(ii) It is an implied contract and Rohan must pay for the services of the coolie.

Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

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

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

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

In the instant case, since the loan given to Amit is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse Bhavesh.

Hence, Bhavesh can proceed against the assets of Amit.

4. 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.

The given problem talks about entering into an agreement for sale of 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. Shyam, who was going to be retired after two years was proposed by Mr. Dev, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that, Mr. Dev offered Mr. Shyam a sum of ₹ 10 lakh as consideration. Mr. Shyam refused initially but later accepted the said agreement to receive money to retire from his office.

Here, Mr. Shyam's promise to sale for Mr. Dev, an employment in the public services is the consideration for Mr. Dev'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.

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

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

(c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.

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

6. As per Section 73 to 75 of Indian Contract Act, 1872, damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (*Hadley Vs Baxendale*).

Therefore, when a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course

of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

7. 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)

8. According to section 131 of Indian Contract Act, 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Sooraj' was surety for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March, 2023. 'Vikas' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2023, 03.03.2023 and 10.03.02023 respectively. 'Sooraj' died in a road accident, but this was not in the knowledge of 'Vikas'. When 'Nikhil' defaulted on payment, 'Vikas' filed suit against legal heirs of 'Sooraj' for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety ('Sooraj'), his legal heirs are liable only for those transactions which were entered before 05.03.2023 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2023 even though Vikas had no knowledge of death of Sooraj.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

9. According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to

the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e. the live birds and eggs).

Right of Mr. Flemmimg: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged.

10. **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:

(i) Fitness as to quality or use

(ii) Goods purchased under patent or brand name

(iii) Goods sold by description

(iv) Goods of Merchantable Quality

(v) Sale by sample

(vi) Goods by sample as well as description

(vii) Trade usage

(viii) Seller actively conceals a defect or is guilty of fraud

Based on the above provision and facts given in the question, it can be concluded that Mrs. Reema is entitled to get the money back or the right kind of cloth as required to serve her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by the buyer. [Section 16(1) of the Sale of Goods Act, 1930].

11. According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms, the property passes to the buyer:

(i) when he signifies his approval or acceptance to the seller,

(ii) when he does any other act adopting the transaction, and

(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

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

Samuel purchases a Television set from Arun, the owner of Gada Electronics, on sale or approval for three days. Before Samuel could take any decision, the Television set spoiled due to earthquake.

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

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

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to

pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

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

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

(1) Interest on the remaining amount

(2) Interest during the pendency of the suit.

(3) Costs of the proceedings.

13. As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,

(i) Actual delivery,

(ii) Constructive delivery and

(iii) Symbolic delivery.

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to the seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

On the basis of the above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Akash is not right. He cannot claim the price back.

14. 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.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal'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 Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

15. (i) Yes, this is a case of partnership as there exists the element of doing business and sharing of profits equally.

(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.

16. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes in capacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved.

The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

(a) as a result of any agreement between all the partners (i.e., dissolution by agreement);

(b) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);

(c) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.

(d) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

(e) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent branches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

17. 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 liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000 for the LLP and its every partner.

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

ABC Club was a Section 8 company, and it was observed on 30th September 2023 that it had started violating the objects of its objective clause. Hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such

order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

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

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments,

and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, the paid-up share capital of HP Polytech 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, HP Polytech Limited is a government company.

20. Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share

capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of the above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even though the company is an unlimited company. Mr. Innocent is liable for upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

21. Meaning of Negotiable Instruments: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument is passed to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments, namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.

8. The instrument should be delivered. Mere drawing of instrument does not create liability.

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

However,

(a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;

(b) the holder 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 from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

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

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

PAPER – 2: BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

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

The Indian Contract Act, 1872

2. Mr. Sohan, a wealthy individual provided a loan of ₹ 80,000 to Mr. Mukesh on 26th February, 2023. The borrower, Mr. Mukesh asked for a further loan of ₹ 1,50,000.

   Mr. Sohan agreed but provided the loan in parts on different dates. He provided ₹ 1,00,000 on 28th February, 2023 and remaining ₹ 50,000 on 3rd March, 2023.

   On 10th March, 2023 Mr. Mukesh while paying off part ₹ 75,000 to Mr. Sohan insisted that the lender should adjust ₹ 50,000 towards the loan taken on 3rd March, 2023 and balance as against the loan on 26th February, 2023.

   Mr. Sohan 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. Mukesh 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?

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

3. 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:

(i) Whether sale of laptops after revoking Shyam's authority is binding on Rama?

(ii) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission?

4. Rohan found a wallet in a restaurant. He enquired 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 the wallet till the true owner is found. After a week, Rohan went back to the restaurant to enquire about the wallet. The manager refused to return it to Rohan, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can Rohan recover the wallet from the Manager?

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

She will be a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will

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succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

(i) By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?

(ii) By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?

(iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority?

6. State with reason(s) whether the following agreements are valid or void as per the Indian Contract Act, 1872:

(i) 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.

(ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

(iii) 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.

7. 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

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guarantor. Explain with reference to the Indian Contract Act, 1872, whether S is liable to pay the balance price of water purifier to R?

8. 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

The Sale of Goods Act, 1930

9. What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

10. 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.

11. Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had 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 Shubhangi 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?

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12. 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.

13. Mrs. Kanchan 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. Kanchan insisted that she would like to see the sample of what would 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.

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

    What would be your answer in case Mrs. Kanchan specified her exact requirement as to length of rice?

14. Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the

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bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

The Indian Partnership Act, 1932

15. (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

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

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

16. 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?

17. With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner.

18. 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.

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The Limited Liability Partnership Act, 2008

19. 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

The Companies Act, 2013

20. 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?

21. Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ₹ 10 crore in the form of 10,00,000 shares of ₹ 100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is Government Company under the provisions of Companies Act, 2013?

22. 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%

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(3) Government of Tamil Nadu 10%

(4) Government of Rajasthan 10%

(5) ABC Limited (owned by Government Company) 15%

As per the above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013.

The Negotiable Instruments Act, 1881

23. 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?

24. 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.



SUGGESTED ANSWERS/HINTS

1. (i) Supreme Court

The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34

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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, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

2. 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. Mukesh 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.

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

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(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. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

3. **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,

(i) 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.

(ii) 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.

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

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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 Rohan, since Rohan is entitled to retain the wallet found against everybody except the true owner.

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

(i) By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, a minor.

(ii) **Minor cannot bind parent or guardian:** In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.

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

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

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

6. **(i)** **The given agreement is valid.**

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 (Section 28 of the Indian

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Contract Act, 1872). 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.

(ii) 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.

(iii) 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 (Section 27). 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.

7. 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.

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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.

8. **(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)].

9. **(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

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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.

(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.

10. (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.

2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from

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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.

11. 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 Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.

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(ii) If Jeweller offers to bring the necklace in original position by repairing, he cannot charge extra cost from Shubhangi. Even though he has to bear some expenses for repair; he cannot charge it from Shubhangi.

12. According to Section 24 of the Sale 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.

13. **(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.

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. Kanchan will not be

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successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) In case Mrs. Kanchan 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.

14. 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.

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, Tushar, the buyer becomes insolvent, and 450 bags are in transit. Ravi, the seller, can stop the goods in transit by giving a notice of it to Tushar. The official receiver, on Tushar's insolvency cannot claim the bags.

15. (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) 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

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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.

(iii) **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 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.

16. 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.

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17. 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.

18. 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.

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19. **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.

20. **(i)** Section 2(87) of the Companies Act, 2013 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:

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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.

21. According to the provisions of Section 2(45) of 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.

According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding 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.

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By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

22. 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.

23. 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—

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- 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.

24. 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.

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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).

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PAPER – 2:
BUSINESS LAWS



QUESTIONS

Indian Regulatory Framework

1. Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework.

The Indian Contract Act, 1872

2. Shri Shivay Temple Trust decided to get renovation of the temple under trust. For this purpose, the President of the trust discussed the budget with contractor. The contractor provided the budget of ₹ 5,00,000. After gaining enough membership to support the funds required renovating the temple, the committee entered in a contract with contractor for renovation. The plans for the proposed structure were submitted and passed. But as the membership list increased, the plans also expanded. Hence, the expected cost of construction is increased from ₹ 5,00,000 to ₹ 7,00,000. Now, increased amount of ₹ 7,00,000 stayed approved and obligated by the committee and contractor. Renovation work was completed, and contractor demanded the payment from committee. Meanwhile, new members who promised to contribute did not turnup. President had filed the suit against the members who promised to contribute. Members denied on the views that their contract with committee to contribute was without any consideration hence invalid. State with reason whether committee will succeed under the provisions of the Indian Contract Act, 1872?

3. Sahil deals in pre-owned cars. Raju sold his accidental car to Sahil by fraud. Sahil could not find that the car was accidental. Akshay, a customer visited the workshop of Sahil with intention to purchase a pre-

owned car. Akshay informed Sahil his intention with the condition that car should be free from any accident. Sahil sold that car to Akshay on erroneously believing that car did not face any accident. Afterward, Akshay found that the car was actually an accidental case. He sued Sahil to avoid the contract and also for damages for expenses suffered on car. Taking into account the provisions of the Indian Contract Act, 1872, state whether Akshay was eligible to avoid the contract and to claim damages from Sahil?

4. Rahul is manufacturer of jute bags. He contracted with Sonia to supply raw jute for the purpose of making bags. Rahul informed Sonia that production process of jute bags would start from 27.06.2024 but Sonia must supply raw jute till 25.06.2024 so that quality verifications can be done in next two days. Sonia supplied the jute on 27.06.2024 and informed Rahul that she couldn't supply on 25.06.2024 due to some unavoidable reasons and she also assured that quality measures were not anyway compromised in supplies. But Rahul wanted to avoid the contract as he was not given opportunity to examine the goods. In light of provisions of Indian Contract Act, 1872, state whether Rahul can avoid the contract?

5. M/s Janta Machine Tools & Co. contracted with M/s Ruchi Traders to make and deliver certain machinery by 31st July for ₹ 15 Lakhs. There was a labour strike in the factory of M/s Janta Machine Tools & Co. and it could not manufacture and deliver the machinery to M/s Ruchi Traders. Afterwards, M/s Ruchi Traders had to purchase the machinery from another manufacturer for ₹ 18 Lakhs. M/s Ruchi Traders was also prevented from performing a contract which was made with M/s Shiksha Technologies at the time of its contract with M/s Janta Machine Tools & Co. and were compelled to pay compensation of ₹ 2 Lakhs to M/s Shiksha Technologies. M/s Janta Machine Tools & Co. was very well informed by M/s Ruchi Traders about its contract with M/s Shiksha Technologies. M/s Ruchi Traders sued M/s Janta Machine Tools & Co for recovery of compensation of ₹ 3 Lakhs (i.e. ₹ 18 Lakhs – ₹ 15 Lakhs) plus ₹ 2 Lakhs given to M/s Shiksha Technologies. Advise under the provisions of the Indian Contract Act, 1872.

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

7. Ankit has taken a loan of ₹ 1,00,000 from Kishore on the guarantee of Sudeep at the interest rate of 12% p.a. After some time, due to financial crises of Ankit and at his request, Kishore reduced the interest rate to 8% and also extended the time for repayment of loan without the consent of Sudeep. Ankit becomes insolvent. Whether Kishore sue Sudeep for recovery of the amount under the provisions of the Indian Contract Act, 1872?

8. 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?

The Sale of Goods Act, 1930

9. Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ ₹1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months. Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which it already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company can recover amount from Ram Bilas Yadav?

10. Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930.

11. Saurabh purchased electric scooter of Vivek for ₹ 5000 only on the gun point. Vivek decided to file the complaint and to avoid the contract on

the basis of coercion applied against him by Saurabh. But before he could do that, Saurabh sold the scooter to Vinay who had no idea about the situation on which the scooter was purchased by Saurabh. Vivek sued Saurabh and Vinay for recovery of scooter. Referring to the provisions of the Sale of Goods Act, 1930, whether Vivek was correct in his decision?

12. (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

(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.

The Indian Partnership Act, 1932

13. Amit and Ajay started the business of wholesale trading of sugar. For this purpose, they contributed ₹ 3,00,000 and ₹ 1,00,000 respectively. Partnership deed was perfectly prepared but clause regarding share of profit was not mentioned in the deed. Due to the heavy rain, stock of sugar was spoiled, and firm incurred the loss of ₹ 60,000. Amit asked Ajay to contribute equally to the loss, but Ajay agreed to contribute only 25% to the loss i.e. in the ratio of capital contribution. Referring to the provisions of the Indian Partnership Act, 1932, how much to be contributed by Ajay to firm's loss?

14. What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?

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

(i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y?

(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?

16. Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932.

The Limited Liability Partnership Act, 2008

17. 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.

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

The Companies Act, 2013

18. Ratanmul Milk India Limited is a public company and formed on 01.01.2023. On this date, Mr. Sharman was appointed as Legal Advisor of the company. It was mentioned in the Articles of Association of the company that Mr. Sharman will not be removed from the post of Legal Advisor till 31.03.2027. On 01.07.2024, a Special Resolution was passed for the alteration in Articles of Association and Mr. Sharman was removed from the company. Mr. Sharman filed the suit against Ratanmul Milk India Limited for removal as a Legal Advisor. Referring the provisions of the Companies Act, 2013, whether can company remove Mr. Sharman?

19. Explain the kinds of share capital as per the Companies Act, 2013.

20. 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?

The Negotiable Instruments Act, 1881

21. Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14.06.2023. Sumit presented the cheque in his bank and his bank informed him on 19.06.2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instrument Act, 1881. State with reasons, whether this suit is maintainable?

22. 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 Instruments Act, 1881?

SUGGESTED ANSWERS

1. 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.

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

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

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

3. According to Section 18 of the Indian Contract Act, 1872, there is misrepresentation:

(1) Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;

(2) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;

(3) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

In other words, 'Misrepresentation' is wrong done without intention to deceive. Further, the aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract; or accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true. Damages can be claimed in case of fraud not for misrepresentation.

In the instant case, Raju sold his accidental car by fraud to Sahil, a dealer in pre-owned cars. Sahil was innocent about the car. That car was sold by Sahil to Akshay on erroneously believing that car did not face any accident. Afterward, when Akshay knew about car, he sued Sahil to avoid the contract also for damages for expenses suffered on car.

On the basis of the facts of the case, Sahil had no idea that the car was an accidental car, and sale of car by Sahil to Akshay is actually affected by misrepresentation not by fraud. Contract is voidable at the intention of Akshay. Therefore, Akshay has the right to avoid the contract, but he cannot claim damages.

4. "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of the Indian Contract Act, 1872, 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 the Contract Act or of any other law. Further, the promisee should have a reasonable opportunity to see that the things offered is the things contracted for otherwise performance cannot considered as valid performance.

In the instant case, Rahul, a manufacturer of jute bags entered in a contract with Sonia to supply raw jute with the instructions that he needs raw jute till 25.06.2024 so that quality verifications can be done in next two days. But Sonia supplied the jute on 27.06.2024 with the information that she couldn't supply on 25.06.2024 due to some unavoidable reasons.

On the basis of the facts of the case, Rahul was not given a proper opportunity to examine the goods at the time of performance. This cannot be considered as valid performance by Sonia. Hence, Rahul can avoid the contract entered with Sonia.

5. Section 73 of the Indian Contract Act, 1872, has laid down the rules as to how the amount of compensation is to be determined. On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach.

Compensation can be claimed for any loss or damage which naturally arises in the usual course of events. Further, compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice. But the party suffering from the breach is bound to take reasonable steps to minimise the loss. No compensation is payable for any remote or indirect loss.

In the instant case, M/s Ruchi Traders sued M/s Janta Machine Tools & Co. for recovery of compensation of ₹ 3 Lakhs (i.e. ₹ 18 Lakhs – ₹ 15 Lakhs) plus ₹ 2 Lakhs given to M/s Shiksha Technologies.

As M/s Ruchi Traders informed M/s Janta Machine Tools & Co. about its contract with M/s Shiksha Technologies at the time of making the contract. Hence, ₹ 2 Lakhs is a special damage which can be recovered with ordinary damages of ₹ 3 Lakhs, which is the loss, caused to it.

6. (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.

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

Further, according to section 135, a contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or promises not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

In the instant case, Kishore advances Ankit a loan on the guarantee of Sudeep. At the request of Ankit, Kishore reduces the interest rate and also extended the time for repayment without the knowledge of Sudeep.

On the basis of the above provisions and facts of the case, the surety Sudeep is discharged as variation is made in a contract of guarantee and

creditor Kishore extends the time for repayment without obtaining the consent of Sudeep.

8. 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- 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.

9. 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.

Further Section 2(6) defines "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

In the instant case, it can be said that there was an agreement to sell between Ram Bilas Yadav and Anna Chips Company and not a sale because the goods under agreement was future goods. Even the payment was made by Anna Chips Company, the property in goods can be transferred only after the goods is ascertained. As the goods was not

ascertained, property is not passed to buyer. Hence, Ram Bilas Yadav must return the price to Anna Chips Company.

10. By virtue of Section 9 of the Sale of Goods Act 1930, the price in the contract of sale may be

- fixed by the contract,
- or agreed to be fixed in a manner provided by the contract, e.g., by a valuer,
- or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third party.

- 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.
- 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.
- However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

In the instant case, Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

11. By virtue of provisions of Section 29 of the Sale of Goods Act, 1930, 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.

In the instant case, Saurabh purchased electric scooter of Vivek for ₹ 5000 only by applying coercion. Before Vivek avoid the contract, Saurabh sold the scooter to Vinay who was an innocent buyer. Now, Vivek sued Saurabh and Vinay for recovery of scooter.

According to above provisions, even Saurabh purchased the electric scooter by applying coercion, Vinay got good title as he was an innocent buyer and purchased the scooter before setting aside the contract by

Vivek. Hence, Vivek cannot recover the scooter from Vinay. However, Vivek may claim damages from Saurabh.

12. (i) Section 64 of the Sale of Goods Act, 1930 provides the 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)]

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

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

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

14. 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.

15. (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.

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 prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here.

(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 there is neither existence of business, nor mutual agency is there.

16. **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 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. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is

delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.

17. (i) Change of name of LLP (Section 17 of the 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.

18. 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 (*Guiness vs. Land Corporation of Ireland*).

In the instant case, the AOA of Ratanmul Milk India Limited provided that Mr. Sharman will be the Legal Advisor of the company and shall not be removed upto 31.03.2027. But company removed him on 01.07.2024 by passing the Special Resolution in the meeting of members and making the alteration in AOA.

On the basis of above provisions of Law and facts of the case, Mr. Sharman cannot enforce any right against the company. Company had right to remove him by making alteration in AOA.

19. **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;

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.

20. 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.

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

When Section 138 shall not be applied unless the below given conditions are complied with-

(a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;

(b) the holder 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 from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, for filing the suit under section 138, Sumit should have to make a demand of payment by giving a notice in writing to Priyansh upto 18.07.2023. In case, Priyansh failed in making the payment within fifteen days of the receipt of the said notice, Sumit could sue under section 138.

22. 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.

PAPER – 2: BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

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

The Indian Contract Act, 1872

2. Albert obtained two loans of ₹ 3,00,000 and ₹ 4,00,000 respectively from a reputed Bank. Out of these, loan of ₹ 3,00,000 was guaranteed by Robert. Albert sent ₹ 2,00,000 to bank but did not intimate as to how it is to be appropriated towards the loans. The Bank appropriated the whole of ₹ 2,00,000 to the loan of ₹ 4,00,000 (the loan not guaranteed). Robert objected on the decision of the Bank. He argued with bank that repayment amount should be first adjusted to the guaranteed loan. State with reasons, whether the Bank was correct in its decision under the Indian Contract Act, 1872?

3. CA. Sarthak Jain had decided to get interior work for his new office. For this purpose, he entered into a contract with M/s Sherry Fine Interiors. It was agreed that M/s Sherry Fine Interiors will complete the interior work upto 31.01.2025. On 31.01.2025, CA. Sarthak Jain observed that only 20% to 30% work is completed. He decided to cancel the contract with M/s Sherry Fine Interiors. M/s Sherry Fine Interiors filed the suit against CA. Sarthak Jain for recovery of the cost which he incurred on the interior work. CA. Sarthak Jain argued that M/s Sherry Fine Interiors did not complete the work within the time as per contract and further the work done till 31.01.2025 by M/s Sherry Fine Interiors was of no use to

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him as he has to appoint new interior designer. Explain, whether CA. Sarthak Jain is liable to pay the cost of work done by M/s Sherry Fine Interiors under the provisions of the Indian Contract Act, 1872?

4. Rohan of 17 years has purchased a mobile of ₹ 25,000 for his online classes from Mobile Sales Centre on credit. On due date, he did not make the payment of mobile. Mobile Sales Centre sued Rohan and his parents for the price of mobile. Rohan has ₹ 15,000 as his cash balance but his father has enough money to pay the price of mobile. Examine the given situation and answer who will be liable to pay the price of mobile as per the provisions of the Indian Contract Act, 1872?

5. Akhil ordered 100 Kgs of wheat to M/s Sahil Kirana Store, and it promised to supply the wheat by the evening. In the evening, the hawker of M/s Sahil Kirana Store comes with 100 Kgs of wheat but mistakenly he delivered it at the house of neighbor of Akhil. Referring to the provisions of the Indian Contract Act, 1872, advice who will be liable to pay the price of wheat?

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

7. Ajay appoints Vijay to sell his electronic goods lying in his godown. He also agrees to give 10% commission on the sale price to Vijay. Afterwards, Ajay revokes Vijay's authority by sending the letter to Vijay. The letter was sent on 3rd March which was received by Vijay on 7th March. On 5th March, Vijay sold the goods worth ₹1,20,000. He claimed for commission from Ajay, but Ajay refused as he already revoked the agency before sale of goods. Referring the provisions of the Indian Contract Act, 1872, whether Ajay was liable to pay commission to Vijay?

8. Explain the concept of Quantum Meruit with reference to the Indian Contract Act, 1872. Under what circumstances can a party claim compensation under this doctrine?

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9. Define co-sureties. State the rights available to surety against the co-sureties relating to contribution under the Indian Contract Act, 1872.

The Sale of Goods Act, 1930

10. Mr. G sold some goods to Mr. H for a 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?

11. Mrs. Seema 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. Seema insisted that she would like to see the sample of what would be provided to her by the shopkeeper before she agreed upon such a purchase.

    The shopkeeper showed her a bowl of rice as a 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, 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. Seema wants to file a suit of fraud against the seller alleging him of selling a mix of good and cheap quality rice. Will she be successful?

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What would be your answer in case Mrs. Seema specified her exact requirement as to length of rice?

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

(ii) X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?

13. (i) State the various essential elements involved in the sale of unascertained goods and their appropriation as per the Sale of Goods Act, 1930.

(ii) What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

14. What is the concept of "Reservation of Right of Disposal" under Section 25 of the Sale of Goods Act, 1930? Under what circumstances is the seller deemed to have reserved the right of disposal of goods?

The Indian Partnership Act, 1932

15. A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sell at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles was continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but couldn't do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of the Indian Partnership Act, 1932?

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16. 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 the Indian Partnership Act, 1932?

17. (i) Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2025. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as a penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500.

Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Comment in the light of the relevant legal provision of the Indian Partnership Act, 1932, the legal position and the correctness of the liability of Mr. Ram to pay whole amount of ₹ 3000 to Mr. John?

(ii) Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

18. (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 not wanting to continue operating the business?

(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

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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. Later A comes to know of the fact of B,s conduct on the transaction with C. So he decided to avoid his 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. Comment upon the decision of A in the said transaction.

The Limited Liability Partnership Act, 2008

19. Explain the legal provisions regarding the eligibility of persons to become partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008. What are the consequences if LLP carries on business with less than the minimum number of partners as prescribed?

The Companies Act, 2013

20. Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2025 of Glassware Private Limited, its turnover was ₹ 1.80 crore and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

21. In the Flower Fans Private Limited, there are only 5 members. All of them went on a pleasure trip in a boat into an open sea. The boat overturn and all of them were drowned. Explain with reference to the provisions of the Companies Act, 2013:

    (A) Is Flower Fans Private Limited no longer in existence?

    (B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?

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22. An employee, Mr. Karan, signed a contract with his employer company, ABC Limited, that he will not solicit the customers after leaving the employment from the company.

But after Mr. Karan left ABC Limited, he started up his own company, PQR Limited and started soliciting the customers of ABC Limited for his own business purposes.

ABC Limited filed a case against Mr. Karan for breach of employment contract and for soliciting their customers for own business. Mr. Karan contended that there is a corporate veil between him and his company and he should not be personally held liable for this.

In this context, the ABC Limited seeks your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company.

23. Pacific Motors Limited is a Government Company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lakh shares of ₹ 100 each. Pacific Motors Limited is holding five lakh five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is a Government Company under the provisions of the Companies Act, 2013?

The Negotiable Instruments Act, 1881

24. 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.

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(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.

25. 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 Instruments Act, 1881?

SUGGESTED ANSWERS/HINTS

1. Hierarchical Structure of the Indian Judicial System

The hierarchical structure of the Indian Judicial System comprised of the Courts for dispute redressal between citizens or between citizens and the Government. Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of the Supreme Court is the final word on the matter and therefore are binding on all High Courts under Article 141 of the Indian Constitution. Whereas decisions of a High Court are binding in the respective state but are only persuasive in other states.

Following are the Powers & the Functions of various courts under the Indian Judicial System.

(i) Supreme Court

The Supreme Court is the apex body of the judiciary, established on 26th January, 1950. The Chief Justice of India is the highest authority appointed under Article 126 of the Constitution of India.

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The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32 of the Constitution of India.

(ii) High Court

It is the highest court of appeal in each state and union territory. Article 214 of the Constitution of India 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 Constitution of India limits a High Court's supervisory power. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226 of the Constitution of India.

(iii) District Court

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

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

(iv) Metropolitan courts

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

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2. Section 60 of the Indian Contract Act, 1872 provides, where the debtor does not intimate and there are no 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. However, it cannot be applied to a disputed debt.

In the instant case, Albert obtained two loans of ₹ 3,00,000 and ₹ 4,00,000 respectively from a reputed Bank of which loan of ₹ 3,00,000 was guaranteed by Robert. Albert sent ₹ 2,00,000 to bank without intimating as to how it is to be appropriated towards the loans. The Bank appropriated the whole of ₹ 2,00,000 to the loan of ₹ 4,00,000 (the loan not guaranteed).

On the basis of the provisions and facts of the case, it can be said that in the absence of clear intimation about the appropriation of payment, it is the sole discretion of the Bank to which loan it can appropriate the amount. Hence, the Bank was correct in its decision under the Indian Contract Act, 1872.

3. Section 2(i) of the Indian Contract Act, 1872 provides that an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Further, when a party to a contract promise to perform a work within a specified time, could not perform with in that time, the contract is voidable at the option of the promisee. If promisee has received any benefit, he must return to promisor.

In the instant case, CA Sarthak Jain contracted with M/s Sherry Fine Interiors for doing interior work in his new office and 31.01.2025 was deadline. M/s Sherry Fine Interiors could complete only 20% to 30% work upto 31.01.2025. CA Sarthak Jain cancelled the contract, but M/s Sherry Fine Interiors filed the suit against CA Sarthak Jain for recovery of the cost which he incurred on the interior work.

In the given problem, the contract is voidable at the option of CA Sarthak Jain as work is not completed within the time agreed in the contract. Further, CA Sarthak Jain is not liable to pay the cost incurred by M/s Sherry Fine Interiors as that cost did not provide any benefit to him and he has to appoint a new interior designer.

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4. Section 11 of the Indian Contract Act, 1872 provides that a minor is not capable to enter into a contract. A contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessaries out of his assets. Minor is not personally liable even for necessaries.

In the instant case, Rohan, a minor, purchased a mobile worth ₹ 25,000 for his studies on credit from Mobile Sales Centre. Mobile Sales Centre sued Rohan and his parents for recovery of the price. Rohan has total ₹ 15,000 as his cash balance as his assets.

On the basis of the facts of the problem, parents of Rohan are not liable for the price of mobile. Rohan's assets are liable to make the payment of price. Hence, the Mobile Sales Centre can recover only ₹15,000 from Rohan i.e. equal to his assets.

5. By virtue of provisions of Section 72 of the Indian Contract Act, 1872, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. Further, as per decision taken in case of *Shivprasad Vs Sirish Chandra*, every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable.

In the instant case, Akhil contracted M/s Sahil Kirana Store for supply of 100 Kgs of wheat which to be delivered by the evening. In the evening, the hawker of M/s Sahil Kirana Store mistakenly delivered 100 Kgs wheat at the house of neighbor of Akhil.

As the hawker of M/s Sahil Kirana Store mistakenly delivered 100 Kgs wheat at the house of neighbor of Akhil and neighbor accepted the wheat, there is a quasi-contract between M/s Sahil Kirana Store and neighbor. Hence, neighbor will be liable to pay the price of wheat.

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

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

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

7. According to 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, Vijay was appointed by Ajay to sell his electronic goods and for which Vijay will be given 10% commission on the sale price. Subsequently, Ajay revokes Vijay's authority by sending the letter to Vijay on 3rd March which was received by Vijay on 7th March. But on 5th March, Vijay already sold the goods worth ₹ 1,20,000. He claimed for commission from Ajay, but Ajay refused.

Since, Vijay came to know about revocation of agency after selling the goods, and so therefore, he has right to claim the commission from Ajay.

8. **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 the breach done 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:

(1) It is only available if the original contract has been discharged.

(2) The claim must be brought by a party not in default.

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The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum merit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

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.

9. Rights of Surety against co-sureties

"Co-sureties- 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.

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10. (i) According to section 44 of the Sale of Goods Act, 1930, 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.

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.

(ii) If the price of the goods were not settled in cash and some amount would have been pending then Mr. G would 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].

11. (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:

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(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 an defect, rendering them unmerchantable, which would not be apparent in reasonable examination of the sample.

In the instant case, in the light of the stated above provision, Mrs. Seema will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) In case Mrs. Seema 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.

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

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

On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until the hammer comes in its normal position after falling onto the table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

(ii) Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it will not become an uncertain and invalid agreement. It will rather be a valid

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contract and the buyer shall pay a reasonable price. (Section 9 and section 10 of the Sale of Goods Act, 1930)

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

13. (i) **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.

(ii) **(A)** **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

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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.

(B) 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.

14. Reservation of right of disposal (Section 25 of the Sale of Goods Act, 1930)

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 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. (sub-section1)

Circumstances under which the right of 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 the right of disposal. (sub section 2)

(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

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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. (sub section 3)

15. According to Section 13(e) of the Indian Partnership Act, 1932, 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.

M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than the minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss. A couldn't contact B as he was on foreign trip. B filed the suit to recover the difference of sale price and minimum price to the firm.

On the basis of the above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

16. 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 bonafide interest of the business of the firm and shall be null and void.

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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.

17. (i) According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved that:

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

On the basis of the above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly.

By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim the rest of ₹ 1500 from Mr. Raheem.

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(ii) Liability of Firm for Misapplication by Partners (Section 27 of the Indian Partnership Act, 1932):

The two clauses of Section 27 bring out 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 cases.

18. (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 not wanting to continue operating of 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.

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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. Therefore, the decision of A to avoid the liability to C, is not feasible.

19. Partners (Section 5 of the LLP Act, 2008): Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

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

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Minimum number of partners (Section 6):

(i) Every LLP shall have at least two partners.

(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

20. As per 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, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall 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, as per the last profit and loss account for the year ending 31st March, 2025 of Glassware Private Limited, its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

21. **(A)** **Perpetual Succession** - A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence.

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The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(B) **The statement given is incorrect -** A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

22. **Corporate Veil:** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

However, under certain exceptional circumstances, the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

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:

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(i) To determine the character of the company i.e. to find out whether co-enemy or friend.

(ii) To protect revenue/tax

(iii) To avoid a legal obligation

(iv) Formation of subsidiaries to act as agents

(v) Company formed for fraud/improper conduct or to defeat law

Based on the above provisions and leading case law of *Gilford Motor Co. Vs Horne,* the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the company only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

23. According to the provisions of 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.

According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company 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.

By virtue of provisions of Section 2(87) of the Companies Act, 2013, Rama Auto Private Limited is a subsidiary company of Pacific Motors Limited because Pacific Motors Limited holds more than one-half of the

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total voting power in Rama Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company.

Hence, Rama Auto Private Limited, being a subsidiary of Pacific Motors Limited will also be considered as a Government Company.

24. (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).

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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).

25. 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

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(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.

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PAPER – 2:
BUSINESS LAWS



QUESTIONS

Indian Regulatory Framework

1. Describe the major functions of the Reserve Bank of India (RBI) in regulating the Indian economy. How does it manage currency, payment systems and economic development?

The Indian Contract Act, 1872

2. Mr. Naman is an auctioneer. He advertised in a leading newspaper that an auction would be held on 17th April, 2025, in Agra for the sale of some office furniture. Mr. Kanha read the advertisement and travelled about 500 kilometres to attend the auction. When he reached the place of the auction, he found that the furniture had been withdrawn from the sale. Mr. Kanha sued Mr. Naman for the loss of his time and expenses.

   State, with reasons, whether Mr. Kanha can claim compensation from Mr. Naman under the provisions of the Indian Contract Act, 1872.

3. Abhimanyu, a businessman, lost his important documents at a crowded railway station. Ramesh, a passerby, voluntarily collected the documents and returned them safely to Abhimanyu without expecting any reward. A week later, impressed by Ramesh's honesty, Abhimanyu wrote and signed a promise to pay him ₹50,000 as a reward. Later, Abhimanyu refused to pay, arguing that the act had already been performed voluntarily and therefore did not constitute valid consideration. Ramesh filed a case claiming that the promise was binding. Decide, under the Indian Contract Act, 1872, whether Abhimanyu is liable to pay.

4. Vikas, a businessman from Delhi, entered into an agreement with Reddy, a trader from Hyderabad, to smuggle a large consignment of gold into India in violation of customs laws. As per the terms, Reddy would arrange the smuggling operation, while Vikas promised to provide financial support and safe storage facilities. Both agreed to share the profits equally. The agreement also stated that Reddy would invest a portion of his profit in Vikas's legitimate textile business, which was a lawful activity.

   After the first successful operation, a dispute arose between the parties. Vikas received the smuggled gold but refused to share the profits, arguing that the agreement was unlawful. Reddy filed a suit for enforcement, claiming that at least the lawful portion of the agreement relating to the textile business should be upheld. Decide whether the agreement is enforceable under the Indian Contract Act, 1872?

5. Mr. Lal, a well-known builder, entered into a contract with Mr. Kumar, a property developer, to construct a large shopping mall in Jaipur for a total consideration of ₹ 10 crores, to be completed within 18 months. After the work began, both parties mutually decided to alter the nature of their agreement. By mutual consent, a new contract was substituted, under which Mr. Lal would instead construct a five-star luxury hotel on the same land for an increased price of ₹12 crores. This new agreement expressly cancelled the earlier mall contract.

   However, six months after the new agreement was executed, the State Government, under its Urban Development Policy, passed a law prohibiting the construction of hotels in that particular commercial zone, though the construction of shopping malls was still permitted. Due to this prohibition, Mr. Lal stopped the construction work and informed Mr. Kumar that the contract had become impossible to perform. Mr. Kumar, however, filed a suit against Mr. Lal for breach of the new contract, demanding damages on the ground that Mr. Lal had failed to perform his obligation.

   Decide, under the provisions of the Indian Contract Act, 1872, whether Mr. Lal is liable for breach of contract or whether the contract has become void due to impossibility.

6. Mr. Ramesh delivered his gold ornaments to a jeweller, Mr. Arun, for polishing. Arun kept the ornaments in the locker of his shop and locked the premises before leaving. Unfortunately, during the night, some thieves broke into the shop and stole the ornaments. When Ramesh asked for the return of his ornaments, Arun expressed his inability and stated that he had taken as much care of the goods as he would have taken of his own property. Ramesh, however, claimed compensation for the loss on the ground that the ornaments were delivered under a contract of bailment and that the bailee was bound to return them.

   Decide, under the provisions of the Indian Contract Act, 1872, whether Arun is liable to compensate Ramesh.

7. Discuss in detail the rules governing the enforcement of contingent contracts under the Indian Contract Act, 1872.

8. "An agency may be terminated by act of parties or by operation of law." Explain this statement and discuss the circumstances under which an agency stands terminated.

9. Discuss the essential conditions that must be fulfilled for a valid contract of guarantee under the Indian Contract Act, 1872.

The Sale of Goods Act, 1930

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

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

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

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

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

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

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

12. Mr. Varun, a laptop distributor, delivered 20 laptops to his friend Mr. Rohit on the condition of "sale on approval or return within 10 days." Rohit neither returned the laptops within the stipulated period nor informed Varun of any rejection. Instead, he kept the laptops in his office showroom and sold 5 of them to Mr. Anuj, claiming to be the absolute owner. Anuj purchased the laptops in good faith, paid full consideration, and even issued a receipt.

After 15 days, Varun demanded the return of all the laptops, including those sold to Anuj. Rohit refused, arguing that he had acted as the owner. Anuj also defended himself, claiming that he was a bona fide purchaser for value. Varun, however, relied on the principle that "no one can transfer a better title than he himself has."

Decide, under the Sale of Goods Act, 1930, whether Anuj has acquired a valid title and whether Varun can recover the goods.

13. Discuss the rights of the buyer against the seller when the seller commits a breach of contract under the Sale of Goods Act, 1930.

14. Explain the rule relating to the passing of property in specific or ascertained goods under Section 19 of the Sale of Goods Act, 1930. How is the intention of the parties as to the passing of property ascertained?

The Indian Partnership Act, 1932

15. Mr. Arun and Mr. Varun are brothers employed in a private company in Delhi. Out of their joint savings, they purchased a plot of land in Noida and constructed five commercial shops on it. These shops were later rented out to different tenants. It was mutually agreed that both would

equally share the monthly rent received. They also decided to contribute jointly towards property tax and repair expenses.

In March 2025, one tenant defaulted in paying rent of ₹50,000. Varun claimed the entire arrears from Arun, stating that both were "partners" in the property business and, hence, Arun, being one of the partners, was liable for the whole amount. Arun, however, refused and argued that they were not partners but only co-owners; therefore, he was not liable to pay Varun's share of the defaulted rent.

Decide, with reasons, whether Arun and Varun can be regarded as partners under the Indian Partnership Act, 1932.

16. M, N, and O were partners in a firm engaged in the transport business. Over time, N became mentally unsound and was incapable of managing the firm's affairs. O alleged that M was continuously guilty of misconduct and was misappropriating the firm's funds. Due to repeated disputes and loss of trust, O filed a petition in Court seeking dissolution of the firm. After the court ordered dissolution, M claimed that he still had the right to use the firm's trucks and vehicles for his personal business. Explain whether contention of M is correct.

17. Explain the rights of a transferee of a partner's interest under the Indian Partnership Act, 1932. How do these rights differ from those of an original partner?

The Limited Liability Partnership Act, 2008

18. Explain the provisions relating to the change of name of a Limited Liability Partnership (LLP) under the LLP Act, 2008.

The Companies Act, 2013

19. Sunrise Infrastructure Ltd. was incorporated with the object of developing residential housing projects as specified in its Memorandum of Association. The Board of Directors decided to invest a substantial part of the company's funds in speculative trading of shares of other companies, hoping to earn quick profits. When the shareholders questioned this act, the directors argued that since the company was duly incorporated and had wide powers of management, their decision

was valid. Examine, with reference to the doctrine of ultra vires, whether the directors' action is binding on the company.

20. Bharat Infrastructure Ltd. was incorporated in India with 55% of its paid-up share capital held by the Central Government, 20% by a State Government, and the remaining 25% by private investors. Some private shareholders argued that government control was not absolute and therefore the company should not be classified as a Government Company. Decide with reference to the Companies Act, 2013.

21. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

The Negotiable Instruments Act, 1881

22. Mr. Anil drew a bill of exchange in Kolkata on Mr. Bimal, a resident of New York, and made it payable in Delhi. On maturity, the bill was dishonoured, and Anil sued Bimal in India claiming interest at the rate of 18% as applicable in Kolkata. Bimal contended that his liability was governed by New York law, where the rate of interest was only 6%. Decide the liability of Bimal with reference to the provisions of the Negotiable Instruments Act, 1881.

23. Define the following Instruments under the Negotiable Instruments Act, 1881:

    (i) Bearer Instruments

    (ii) Order Instruments

    (iii) Inland Instruments

    (iv) Foreign Instruments

SUGGESTED ANSWERS/HINTS

1. Reserve Bank of India:

(i) It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.

(ii) It is under the ownership of Ministry of Finance, Government of India.

(iii) It is responsible for the control, issue and maintaining supply of the Indian rupee.

(iv) It also manages the country's main payment systems and works to promote its economic development.

(v) 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).

(v) RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.

(vi) 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.

2. According to the Indian Contract Act, 1872, an invitation to offer is different from offer. Quotation catalogues, advertisements in newspaper for sale are not offer. These are invitations to public to make an offer. Bidding in an auction is also an invitation to offer. When goods are sold through auction, the auctioneer does not contract with anyone who attends the sale. It was decided in case of *Harris vs. Nickerson* that the advertisement auction was merely a declaration to inform potential purchasers that the sale was taking place. It was not an offer to contract with anyone.

In the instant case, Mr. Naman advertised for sale of some office furniture in an auction on 17th April, 2025 in Agra for sale of some office furniture. Mr. Kanha read the advertisement and travelled about 500 kilometres to attend the auction, but he found that furniture was withdrawn from the sale. Mr. Kanha sued against Mr. Naman for loss of his time and expenses.

On the basis of above provisions and facts, advertisement of auction by Mr. Naman is not an offer but merely in invitation to offer. He is not liable to Mr. Kanha. Hence, Mr. Kanha could not succeed in his suit.

3. Section 2(d) of the Indian Contract Act, 1872 defines consideration as an act or abstinence done at the desire of the promisor, which has already been done, is being done, or is promised to be done by the promisee or any other person.

Section 25(2) specifically provides that a promise made in writing and signed by the promisor to compensate a person who has voluntarily done something for the promisor is enforceable, even without fresh consideration. Thus, although the original act was voluntary, once a subsequent written promise is made, it becomes binding.

In the present case, Ramesh voluntarily returned Abhimanyu's lost documents. At that time, no enforceable contract existed because the act was not done at Abhimanyu's request. Subsequently, Abhimanyu made a written promise to pay ₹50,000 to Ramesh as a token of appreciation. Later, Abhimanyu refused to fulfil his promise.

Here, the promise made by Abhimanyu in writing to compensate Ramesh for past voluntary services is valid and enforceable. Therefore, Ramesh is entitled to receive ₹50,000 and Abhimanyu is legally bound to pay.

4. Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is (a) forbidden by law, (b) defeats the provisions of any law, (c) fraudulent, (d) involves injury to person or property, (e) immoral, or (f) opposed to public policy. Any agreement with such an object is void.

Smuggling of gold is expressly prohibited by Customs Law in India and is a criminal offence. Therefore, any contract to undertake smuggling is not only unlawful but also opposed to public policy, since Courts will not enforce agreements that encourage illegal trade.

Section 24 further provides that if any part of a single consideration or object is unlawful, the entire agreement is void. Only when the lawful and unlawful parts can be separated may the lawful portion be enforced. If the two are inseparable, the entire contract fails.

In this case, the main object of the agreement between Mr. Vikas and Reddy was to smuggle gold, which is forbidden by law and opposed to public policy. This makes the primary agreement void. Even though the

agreement also included a clause that profits from smuggling would later be invested in Mr. Vikas's legal textile business, the lawful part is not separable from the unlawful part because the investment depended entirely on the profits derived from the illegal act.

Hence, the agreement between Mr. Vikas and Reddy is void under Sections 23 and 24 of the Indian Contract Act, 1872. The object of the contract (smuggling) is forbidden by law and opposed to public policy, and the lawful portion (investment in textiles) cannot be separated from the unlawful part. Therefore, Reddy cannot enforce either the smuggling profits or the investment clause. In law, no rights or obligations can arise out of an unlawful agreement.

5. According to section 62 of the Indian Contract Act 1872, if the parties to a contract agree to substitute a new contract in place of the old one, or to rescind or alter it, the original contract need not be performed.

Section 56 provides that an agreement to do an act which is impossible in itself is void. Further, if a contract was possible when it was made, but becomes impossible or unlawful after formation due to some event beyond the control of parties, it becomes void.

However, mere commercial hardship or rise in cost is not impossibility. Impossibility applies only when the performance has become absolutely impracticable or unlawful.

In the instant case, at first, Mr. Lal agreed to construct a shopping mall for ₹10 crores within 18 months. Subsequently, both Lal and Kumar, by mutual consent, substituted the original agreement with a new one, under which Lal was required to construct a luxury hotel for ₹12 crores. By this substitution, the earlier mall contract stood discharged. During the continuation of the new contract, the State Government imposed a legal prohibition on the construction of hotels in that particular zone, which directly affected the subject matter of the agreement.

Here, the first contract for the construction of a mall was discharged by novation under Section 62, since a new contract was formed with mutual consent. Therefore, the mall contract no longer remained enforceable.

As regards the substituted contract for construction of the hotel, a subsequent change in Law by the government prohibited hotel

construction in that area. This made performance of the hotel contract unlawful and impossible. Under Section 56, the contract therefore became void due to supervening impossibility.

Hence, Mr. Lal is not guilty of breach of contract because non-performance resulted from an event beyond his control. Mr. Kumar cannot claim damages as the contract stood discharged by impossibility. Both parties are therefore relieved from their respective obligations.

6. According to Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods from one person to another for a specific purpose, upon a contract that the goods shall be returned once the purpose is completed.

Section 151 provides that the bailee is bound to take as much care of the goods bailed as a man of ordinary prudence would take of his own goods.

Further, Section 152 states that if the bailee has taken such reasonable care, he is not responsible for loss, destruction or deterioration of the goods.

In the instant case, Ramesh entrusted his ornaments to Arun, a jeweller, for polishing. Arun locked them securely in his shop's locker. However, a theft occurred at night, and the ornaments were stolen despite the precautions taken. Ramesh demanded compensation, but Arun refused, claiming that he had exercised ordinary care.

Hence, it is clear that Arun has taken reasonable precautions by locking the ornaments in the locker and securing the shop. The theft was beyond his control and does not amount to negligence. Therefore, Arun cannot be held liable to compensate Ramesh for the stolen ornaments.

7. 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 Indian Contract Act, 1872.

(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.

8. **Termination of agency [Section 201 of the Indian Contract Act, 1872]:** Termination of agency means putting an end to the legal relationship between principal and agent. Section 201 provides for the following modes of termination:

(a) **Revocation:** An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

Compensation for revocation by principal [Section 205]: If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation.

Notice of revocation [Section 206]: When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he can be liable to pay compensation for any damage caused to the agent (Section 206).

Revocation and renunciation may be expressed or implied [Section 207]: Revocation of agency may be expressed or implied in the conduct of the principal.

(b) **Renunciation by agent [Section 206]:** An agent may renounce the business of agency in the same manner in which the principal has the right of revocation. In the first place, if the agency is for a fixed period, the agent would have to compensate the principal for any premature renunciation without sufficient cause. [Section 205] Secondly, a reasonable notice of renunciation is necessary. Length of notice (time period of notice) is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal. [Section 206]

(c) **Completion of business:** An agency is automatically and by operation of law terminated when its business is completed. Thus, for

example, the authority of an agent appointed to sell goods ceases to be exercisable when the sale is completed.

(d) **Death or insanity:** An agency is determined automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding.

(e) **Principal's insolvency:** An agency ends on the principal being adjudicated insolvent.

(f) **On expiry of time:** Where an agent has been appointed for a fixed term, the expiration of the term puts an end to the agency, whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term.

9. Essential features of a Guarantee

The following are the requisites of a valid guarantee:-

1. **Purpose:** The purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.

2. **Consideration:** Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.

   As per Section 127 consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee, but past consideration is no consideration for the contract of guarantee. Even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.

3. **Existence of a liability:** There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. The liability must be legally enforceable and not time barred.

4. **No misrepresentation or concealment (section 142 and 143):** Any guarantee which has been obtained by the means of

misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143).

5. **Writing not necessary:** Section 126 expressly declares that a guarantee may be either oral or written.

6. **Joining of the other co-sureties (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. That implies, the guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

10. **(i)** A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

(ii) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.

(iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

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

revealed. But where the defects are latent and cannot be discovered on ordinary inspection, the seller remains liable.

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

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

12. Section 24 of the Sale of Goods Act, 1930 states that when goods are delivered on approval or "sale or return" basis, the property passes to the buyer if he accepts them, does any act adopting the transaction such as reselling, or retains the goods beyond the fixed or reasonable time.

Section 27 provides the general rule that no one can transfer a better title than he himself has. But the Act recognizes exceptions to protect bona fide purchasers.

Under Section 30(1), if a seller in possession of goods resells them to a buyer in good faith, such buyer gets a valid title. Similarly, under Section 30(2), if a buyer with the seller's consent obtains possession and resells before ownership has passed the sub-buyer in good faith also acquires good title.

Thus, once goods on approval are retained beyond time or resold, ownership passes, and a purchaser in good faith is protected.

In the present case, Varun delivered 20 laptops to Rohit on approval for 10 days. Rohit neither rejected nor returned the goods but displayed them in his showroom and sold 5 laptops to Anuj. This constituted an

act of adopting the transaction under Section 24; therefore, ownership of all the laptops passed to Rohit. Since Anuj purchased them in good faith, for value, and without notice of Varun's rights, he falls within the exceptions under Sections 27 and 30.

Therefore, it is clear that by retaining the laptops beyond approval period and selling part of them, Rohit became the owner of the goods. His sale to Anuj was valid, and Anuj, being a bona fide purchaser, acquired a good title. Varun cannot recover the laptops from Anuj but may claim the price of the remaining from Rohit. Hence, Varun's contention is not legally sustainable.

13. 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 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.

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.

14. Property (Specific or ascertained goods) passes when intended to pass (Section 19 of the Sale of Goods Act, 1930):

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. [sub-section (1)]

For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. [sub-section (2)]

Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. [sub-section (3)]

Stages of goods while passing of property

1. **Specific goods in a deliverable state (Section 20):** Where there is an unconditional contract for the sale of specific goods in a 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 the price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

2. **Specific goods to be put into a deliverable state (Section 21):** 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.

3. **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22):** Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

15. According to Section 4, Section 5 and Section 6 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.
- The following essentials must exist to constitute a partnership:
    - There must be an agreement between the parties;
    - The agreement must be to carry on a business;
    - The agreement must be to share profits of such business; and
    - The business must be carried on by all or any of them acting for all (mutual agency).

- Partnership arises from contract and not from status.
- The real relation between the parties, as shown by all relevant facts, determines whether a partnership exists.
- In contrast, co-ownership arises by inheritance or purchase and does not necessarily involve business or mutual agency.

In the present case, Arun and Varun, while working in jobs, purchased a piece of land with their joint savings. They built shops on it and rented them out, dividing the rental income equally. When a tenant defaulted on paying ₹50,000, Varun demanded the entire amount from Arun, treating them as "partners." Arun denied this, claiming they were only co-owners of the property and not partners in any business.

On applying the above provisions, it is clear that Arun and Varun are only co-owners and not partners. They never entered into an agreement to carry on a business with a profit motive; they simply invested in property and shared rental income. There is no element of business activity or mutual agency between them.

Therefore, under the Indian Partnership Act, 1932, they cannot be regarded as partners. Arun is liable only for his individual share of the defaulted rent and not for the whole amount.

16. According to Section 44 of the Indian Partnership Act, 1932, the Court may dissolve a firm on several grounds, including when a partner becomes of unsound mind, when a partner is guilty of misconduct affecting business, when partners commit persistent breaches of the partnership agreement, or when it becomes just and equitable to dissolve the firm.

Further, Section 46 provides that on dissolution of a firm, every partner or his representative is entitled to have the firm's property applied in payment of debts and liabilities of the firm, and the surplus distributed among partners according to their rights. No partner can claim exclusive rights over the property of the firm after dissolution.

Here, N became mentally unsound and incapable of attending to partnership matters. O alleged that M was guilty of misconduct and misappropriation of funds. Due to loss of confidence and ongoing

disputes, O approached the court for dissolution of the firm. The court ordered the dissolution. Subsequently, M claimed personal rights over the firm's assets, particularly its vehicles, for his individual use.

In the instant case, the dissolution ordered by the court was valid under Section 44, as one partner was of unsound mind and another was guilty of misconduct. After dissolution, under Section 46, the firm's assets must be used for clearing liabilities and then distributed among partners according to their share. M cannot claim exclusive rights over trucks and vehicles for personal business. His claim is unjustified, and the property must be applied for settlement of accounts of the dissolved firm.

17. Rights of Transferee of a Partner's interest (Section 29 of the Indian Partnership Act, 1932)

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

The rights of such a transferee are as follows:

(I) During the continuance of partnership, such transferee is not entitled:

(a) to interfere with the conduct of the business,

(b) to require accounts, or

(c) to inspect books of the firm.

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

(II) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

(a) to receive the share of the assets of the firm to which the transferring partner was entitled, and

(b) for the purpose of ascertaining the share,

he is entitled to an account as from the date of the dissolution.

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

18. Change of name of LLP (Section 17 of the 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.

It is further provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

(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.

19. The Memorandum of Association defines the scope of activities of a company. Any act done beyond the objects stated in the memorandum is ultra vires and void. The doctrine of ultra vires, established in *Ashbury Railway Carriage and Iron Co. Ltd. vs. Riche*, holds that an act beyond the powers of the company cannot be ratified even by unanimous consent of all shareholders. Such acts are wholly void and cannot bind the company.

In the instant case, the object clause of Sunrise Infrastructure Ltd. restricted the company's business to real estate development. However, the directors diverted funds into speculative share trading, which was not included in the memorandum. This activity was therefore beyond the powers conferred on the company.

Therefore, the directors' action is ultra vires the company and, therefore, void. The company is not bound by such acts, and the funds utilized for speculative purposes can be recovered. The doctrine of ultra vires protects shareholders and creditors by ensuring that the company's capital is used only for authorized purposes.

20. Section 2(45) of the Companies Act, 2013 defines a government company as one in which not less than 51% of the paid-up share capital is held by the Central Government, State Government(s), or jointly by the Central and State Governments.

In the instant case, the Central and State Governments together held 75% of the paid-up share capital of Bharat Infrastructure Ltd. The remaining 25% was private investors.

Taking into account the provisions of the Companies Act, 2013, Bharat Infrastructure Ltd. is a Government Company, since the combined government holding exceeds 51%. The argument of the private shareholders is untenable.

21. Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in
- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

(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.

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

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

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

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

23. **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.

"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.

PAPER – 2:
BUSINESS LAWS

QUESTIONS

Indian Regulatory Framework

1. What is the Insolvency and Bankruptcy Board of India (IBBI)? Discuss its establishment, powers, functions and the categories of persons and entities covered under the Insolvency and Bankruptcy Code, 2016.

The Indian Contract Act, 1872

2. Mr. Sharma, a trader, wrote to Mr. Verma offering to sell him 100 barrels of "oil" at ₹ 5,000 per barrel. The letter reached Verma on 1st June. On 2nd June, Sharma posted another letter revoking the offer. However, before receiving the revocation, Verma posted a letter of acceptance on 3rd June. Sharma's letter of revocation reached Verma on 4th June. When Verma later demanded delivery, Sharma refused, stating that the contract was void since he had not specified which kind of oil was being offered (mustard, groundnut, or refined), and further claimed that he had no oil stock at all. Verma sued for breach of contract, insisting that valid acceptance had already been communicated. Sharma defended himself by stating that the contract was void for uncertainty and impossibility.

   Examine the relevant provisions of the Indian Contract Act, 1872, and decide whether a binding contract was created between Sharma and Verma and whether Sharma is liable for damages.

3. Mr. Das, a landowner, transferred his property to his daughter, Geeta, on the condition that she would pay ₹ 20,000 annually to her maternal uncle, Mr. Gopal. Geeta accepted the property but later failed to pay the annuity. Mr. Gopal sued Geeta for recovery. Geeta argued that since

Gopal was not a party to the agreement, he had no right to sue. Gopal contended that the consideration had moved from Das on his behalf and that he was entitled to enforce the promise.

Examine whether Mr. Gopal can recover the annuity under the Indian Contract Act, 1872.

4. Mr. Sen, an elderly widower, executed a gift deed transferring his valuable house to his nephew, Kashish. Subsequently, it was discovered that Kashish had threatened Mr. Sen that, unless the property was gifted to him, he would file a false criminal complaint of harassment against him. Further, Kashish, being Mr. Sen's sole caretaker, emotionally influenced him into believing that transferring the property would guarantee him lifelong care and affection.

   Mr. Sen now seeks to set aside the transaction. Examine whether the gift deed is valid under the Indian Contract Act, 1872.

5. Mr. Rohan entered into a contract with Mr. Sohan to deliver 1,000 bags of cement to his construction site on or before 15th August. The payment was to be made immediately upon delivery. However, Rohan failed to deliver the cement by the stipulated date. On 25th August, Rohan offered to deliver the goods, but by that time, the delay had caused disruption to the construction schedule, resulting in Sohan losing a contract with a government department.

   Sohan refused to accept the delayed delivery and filed a suit for damages. Rohan contended that the delay was minor and argued that Sohan was obligated to accept the goods. Examine the rights and liabilities of the parties under the Indian Contract Act, 1872.

6. Mr. Ramesh delivered his gold ornaments to a jeweller, Mr. Arun, for polishing. Arun kept the ornaments in the locker of his shop and locked the premises before leaving. Unfortunately, during the night, thieves broke into the shop and stole the ornaments. When Ramesh asked for the return of his ornaments, Arun expressed his inability to do so and stated that he had taken as much care of the goods as he would have taken of his own property. Ramesh, however, claimed compensation for the loss on the ground that the ornaments had been delivered under a contract of bailment and that the bailee was bound to return them.

Decide, under the Indian Contract Act, 1872, whether Arun is liable to compensate Ramesh.

7. 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?

8. "Distinguish between a Contract of Indemnity and a Contract of Guarantee. Explain the points of distinction with reference to the Indian Contract Act, 1872."

9. Wagering agreements are void under Section 30 of the Indian Contract Act, 1872. However, certain transactions resemble wagering transactions but are valid in the eyes of law. Discuss such transactions.

The Sale of Goods Act, 1930

10. Mr. Rohit, a trader, entered into a contract with Mr. Mohan for the purchase of 100 chairs for a total consideration of ₹ 1,00,000. The agreement expressly provided that ownership of the goods would pass to Rohit immediately, while the price was to be paid in two equal

instalments within 30 days. The goods were duly delivered in accordance with the contract.

However, when the second instalment became due, Rohit defaulted in payment and contended that since a part of the price remained unpaid, the transaction amounted only to an agreement to sell and not a completed sale. On this basis, he refused to pay the balance amount. Examine the legal validity of Rohit's contention with reference to the Sale of Goods Act, 1930.

11. Mr. Sameer, a retail shopkeeper, purchased 10 cartons of packaged fruit juice bottles from Fresh Foods Ltd., a reputed beverage dealer. The cartons were sealed and appeared to be in good condition, and therefore Sameer accepted them without objection. Subsequently, when the bottles were sold to customers, it was discovered that several of them were contaminated with fungus. A few customers even fell ill after consuming the juice, compelling Sameer to issue refunds and causing significant reputational damage to his business.

When Sameer demanded a refund and compensation from Fresh Foods Ltd., the seller refused, contending that the goods had been sealed and were accepted by him at the time of delivery. Examine whether Sameer can succeed in his claim under the Sale of Goods Act, 1930.

12. A government department conducted an auction of used vehicles. Mr. Suresh bid for a truck at ₹5,00,000. Before the auctioneer's hammer fell, Suresh tried to withdraw his bid, but the auctioneer refused. Later, the auctioneer also bid through his agent without prior notice to the bidders. Another bidder, Mr. Akash, complained that the auction was not fairly conducted. Decide, with reference to the Sale of Goods Act, 1930, whether the auction sale is valid.

13. What is meant by Reservation of Right of Disposal? Explain the circumstances under which the seller is deemed to have reserved this right under the Sale of Goods Act, 1930.

14. "What is meant by the doctrine of Caveat Emptor? State the conditions for its applicability and discuss the exceptions to this doctrine under the Sale of Goods Act, 1930."

The Indian Partnership Act, 1932

15. 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/-.

16. 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:

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

    (ii) What are the factors which should be kept in mind prior to expelling a partner from the firm by other partners?

17. Describe the following kinds of partnership with reference to the Indian Partnership Act, 1932:

    (a) Partnership at will

    (b) Partnership for a fixed period

    (c) Particular partnership

    (d) General partnership.

The Limited Liability Partnership Act, 2008

18. Explain the following features of a Limited Liability Partnership under the LLP Act, 2008:

    (a) Artificial legal person

    (b) Common seal.

The Companies Act, 2013

19. Mr. Ramesh Saluja incorporated a private limited company under the name Saluja & Sons Pvt. Ltd., with himself, his wife, and his children as shareholders. The newly formed company took over his existing leather business and continued its operations.

    Subsequently, the company went into liquidation. The creditors contended that the company was merely a façade or alter ego of Mr. Saluja and that it lacked an independent existence. On this basis, they argued that the corporate veil should be lifted and Mr. Saluja should be held personally liable for the company's debts. With reference to the relevant case law on lifting of the corporate veil, examine whether Mr. Saluja can be held personally liable.

20. A company, ABC limited as on 31.03.2025 had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2025, 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.

21. Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal.

The Negotiable Instruments Act, 1881

22. 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.

    (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.

23. 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 Instruments Act, 1881?

SUGGESTED ANSWERS/HINTS

1. **Insolvency and Bankruptcy Board of India (IBBI):** IBBI 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.

2. **Section 4 of the Indian Contract Act, 1872 lays down the rules of communication of acceptance and revocation:**

   - The communication of acceptance is complete, as against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor.
   - The communication of revocation is complete, as against the person who makes it, when it is put into transmission; and, as against the person to whom it is made, when it comes to his knowledge.
   - Therefore, revocation is valid only if it reaches the offeree before he posts his acceptance.

   Further, Section 10 provides the essentials of a valid contract. Among them, the agreement must be certain and capable of being performed. If the meaning of the agreement is uncertain, or if it is incapable of performance, it cannot be enforced. Section 56 declares that agreements

to do an impossible act are void. If a contract becomes impossible to perform after it is made, it becomes void when the act becomes impossible.

In the instant case, Mr. Sharma offered to sell "oil" to Mr. Verma and later posted a revocation. Before receiving the revocation, Verma posted his acceptance. Sharma then refused delivery, claiming the contract was void due to the unspecified "oil" and his lack of stock.

On the basis of the provisions of law and the facts of the case, it can be concluded that although acceptance was validly communicated before revocation, the agreement was void because (a) it was uncertain (the type of oil was not specified), and (b) performance was impossible (Sharma had no oil stock). Hence, no enforceable contract exists and Verma cannot claim damages.

3. Under Section 2(d) of the Indian Contract Act, 1872, consideration may move from the promisee or any other person. However, under the doctrine of privity of contract, only parties to a contract can sue upon it. An exception was recognized in *Chinnayya vs. Ramayya*, where an agreement made between two parties for the benefit of a third party was held enforceable, even though the third party was not directly a part of the agreement.

In the present case, Mr. Das transferred his property to his daughter, Geeta, on the condition that she would pay ₹20,000 annually to her maternal uncle, Mr. Gopal. Geeta accepted the property but failed to fulfil her obligation. Although Gopal was not a party to the original contract, the promise was clearly intended for his benefit, and consideration had moved from Das to Geeta on his behalf.

Although the general rule is that a stranger to a contract cannot sue, Gopal falls within the recognized exception. Since consideration moved from Das and the contract was made expressly for Gopal's benefit, he is entitled to enforce the promise. Hence, Geeta is legally bound to pay the annuity to Gopal.

4. Section 15 of the Indian Contract Act, 1872 defines coercion as committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawfully detaining property, with the intention of compelling a person to enter into an agreement.

Section 16 defines undue influence as a situation where one party, being in a position to dominate the will of another, uses that position to obtain an unfair advantage. Under Sections 19 and 19A, contracts induced by coercion or undue influence are voidable at the option of the aggrieved party.

In the present case, Kashish forced Mr. Sen to execute a gift deed by threatening to lodge false criminal proceedings, which constitutes coercion. Further, as Mr. Sen's caretaker and close relative, Kashish held a fiduciary position and emotionally manipulated him into believing that the transfer would secure lifelong care. This amounts to undue influence, since Kashish used his position to dominate Mr. Sen's will and obtain an unconscionable advantage.

Here, the gift deed suffers from two vitiating factors—coercion and undue influence. Therefore, it is voidable at the option of Mr. Sen. He can approach the court to have the deed set aside, and he is not bound to transfer his property under such unfair circumstances.

5. As per section 52 of the Indian Contract Act, 1872, when the order of performance of reciprocal promises is expressly fixed, they must be performed in that order. While section 53 provides, if the promisor prevents the promisee from performing his promise, the promisee is entitled to compensation. Further, section 55 provides if time is expressly of the essence, and promisor fails, contract becomes voidable at the option of the promisee. If not of essence, contract continues but damages can be claimed for delay.

In the instant case, Rohan promised to deliver 1,000 bags of cement by 15th August, which was crucial for Sohan's construction project. Rohan failed to deliver on the stipulated date and instead offered the goods after 10 days. Because of this delay, Sohan's project was disrupted, and he lost a government contract.

In commercial contracts such as supply of materials for construction projects, time is usually regarded as the essence of the contract. Since Rohan failed to deliver the cement by the stipulated date, the contract became voidable at the option of Sohan. He was justified in refusing the delayed performance. Furthermore, under Section 53, Rohan's failure prevented Sohan from performing his reciprocal obligation with the government department, resulting in financial loss. Therefore, Sohan is entitled to reject the goods and claim damages from Rohan for the actual loss suffered. Rohan's defense of a "minor delay" is not valid under the law.

6. According to Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods from one person to another for a specific purpose, upon a contract that the goods shall be returned once the purpose is completed.

Section 151 provides that the bailee is bound to take as much care of the goods bailed as a man of ordinary prudence would take of his own goods. Further, Section 152 states that if the bailee has taken such reasonable care, he is not responsible for loss, destruction or deterioration of the goods.

In the present case, Ramesh entrusted his ornaments to Arun, the jeweller, for polishing. Arun locked them securely in his shop's locker. A theft occurred at night, and the ornaments were stolen despite the precautions taken. Ramesh demanded compensation, but Arun refused, claiming he exercised ordinary care.

On the basis of the law provisions and facts of the case concerned, it is clear that Arun has taken reasonable precautions by locking the ornaments in the locker and securing the shop. The theft was beyond his control and does not amount to negligence. Therefore, Arun cannot be held liable to compensate Ramesh for the stolen ornaments.

7. 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.

8. 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	Surety can proceed against principal

	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.	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.

9. Wagering agreements are void under Section 30 of the Indian Contract Act, 1872. However, certain transactions resemble wagering transactions but are valid in the eyes of law which are following:

(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 competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹ 1,000.

(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.

10. Section 4 of the Sale of Goods Act, 1930, defines a contract of sale of goods as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. If the property in goods is transferred at the time of the contract, it is a sale. If the transfer is to take place in the future or subject to some conditions, it is an agreement to sell. Thus, the distinction lies in the passing of ownership, not in the time of payment or delivery. Once ownership is transferred, the buyer becomes owner and must pay the agreed consideration.

In the present case, Mohan delivered 100 chairs to Rohit and ownership was intended to pass immediately as per their agreement. However, Rohit failed to pay the second installment and contended that the contract was incomplete and only an agreement to sell.

Since the ownership of chairs had already passed to Rohit at the time of delivery, the contract was a completed sale under Section 4 of the Act. Rohit's contention that it was only an agreement to sell is legally unsustainable. He is bound to pay the balance of the price to Mohan, and his refusal amounts to a breach of contract.

11. As per Section 16(2) of the Sale of Goods Act, 1930, when 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. In addition, in case of eatables and consumable goods, there is an implied condition as to wholesomeness, i.e., the goods must be fit for human consumption. Where such goods are harmful or dangerous to health, the buyer is entitled to reject them and also claim damages.

In this case, Sameer purchased fruit juice bottles from Fresh Foods Ltd. The cartons were sealed and appeared proper from outside. However, when consumed, they were found contaminated, making them harmful for human health. Customers who consumed them became sick, and Sameer suffered both financial and reputational loss. Fresh Foods Ltd. denied liability citing that the cartons were sealed and accepted.

On the basis of the above provisions and facts, the juice bottles were not of merchantable quality and also failed the implied condition of wholesomeness. It was the duty of the seller to ensure that food products supplied were fit for human consumption. Hence, Sameer is

entitled to reject the goods, recover the price, and also claim damages for the loss suffered. The seller cannot escape liability merely because the cartons were sealed.

12. Section 64 of the Sale of Goods Act, 1930 deals with auction sales. A sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until then, a bidder may withdraw his bid. The seller has the right to reserve bidding, but if he intends to bid himself or through an agent, such right must be expressly notified. If the seller bids without such notice, the sale may be treated as fraudulent and voidable.

Here, Suresh made a bid of ₹5,00,000 for a truck but attempted to withdraw it before the fall of the hammer. Legally, he was entitled to do so. The auctioneer's refusal to permit withdrawal was incorrect. Further, the seller also bid through his agent without notifying bidders of such right, which amounts to fraudulent conduct under Section 64.

Therefore, on the basis of the above provisions, the auctioneer's refusal to allow Suresh to withdraw his bid was invalid, as a bid can be withdrawn before completion of sale. Further, the seller's secret bidding through an agent without notice made the auction unfair and voidable at the option of buyers. Hence, the auction was not validly conducted.

13. Reservation of right of disposal (Section 25 of the Sale of Goods Act, 1930)

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 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. (sub-section1)

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. (sub-section 2)

(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. (sub-section 3)

14. 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.

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. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Following are the conditions to be satisfied:

- if the buyer had made known to the seller the purpose of his purchase, and
- the buyer relied on the seller's skill and judgement, and
- seller's business to supply goods of that description

Exceptions: The doctrine of Caveat Emptor is, however, 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, 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)].
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)]. Here, the buyer is relying on the particular brand name.
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 for latent defects. 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.

15. (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 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.

16. (i) Whether action by the Partners was Justified?

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.

(ii) Factors to be kept in mind before expelling a Partner

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.

17. The various kinds of partnership are as follows:

(a) Partnership at will 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.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will.

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

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

(b) **Partnership for a fixed period:** 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.

(c) **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.

(d) **General partnership:** Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership. In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general partnership. General partnership is different from limited liability partnership.

18. **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.

Common Seal: A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

19. Under the Companies Act, 2013, a company on incorporation becomes a distinct legal person, separate from its members. The principle was established in the landmark case of *Salomon v. Salomon & Co. Ltd.*, where it was held that even if one person holds substantially the entire shareholding, the company is not his agent or trustee. Creditors can proceed only against the company, and not against its members, unless the corporate veil is lifted in exceptional cases.

In this case, the creditors contended that *Saluja & Sons Pvt. Ltd.* was in reality the business of Mr. Ramesh Saluja and that he should be personally liable for the company's debts. However, the company was duly incorporated with separate legal existence and had complied with statutory requirements.

Applying the principle in *Salomon v. Salomon & Co. Ltd.*, the company is a separate legal entity. The creditors cannot make Mr. Saluja personally liable merely because he held almost all the shares. Thus, the veil cannot be lifted in this case, and liability rests with the company alone.

20. 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 31.03.2025, ABC Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2025, 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.

21. Do you agree that a Company is an artificial person?

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, Beeta Limited can do the authorization as mentioned in the above manner.

22. (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).

23. 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.

PAPER – 2: BUSINESS LAWS

PART – I: AMENDMENTS FOR SEPTEMBER 2026 EXAMINATIONS

CHAPTER 6: THE COMPANIES ACT, 2013

Notification G.S.R. 880(E) dated 1st December, 2025

The Central Government has amended the Companies (Specification of definition details) Rules, 2014, through the Companies (Specification of definition details) Amendment Rules, 2025.

Amendment:

In the Companies (Specification of definition details) Rules, 2014, in rule 2, in sub-rule (1), for clause (t), the following clause shall be substituted, namely:-

"(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees ten crores and rupees one hundred crores respectively."

New Law

Page 6.14 of the Study material

Small Company: Small company is given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

1. **paid-up share capital** of which **does not exceed rupees ten crores** or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
2. **turnover** of which as per profit and loss account for the immediately preceding financial year **does not exceed rupees one hundred crores** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

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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.

Small Company –significant points

- A private company
- Paid up capital – not more than ₹ 10 crores

  and
- Turnover – not more than ₹ 100 crores.
- Should not be – Section 8 company
- Holding or a Subsidiary company

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PART – II: QUESTION AND ANSWERS



QUESTIONS

Indian Regulatory Framework

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

The Indian Contract Act, 1872

2. 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?

3. Rahul directs Sarthak to sell laptops for him and agrees to give Sarthak eleven percent (11%) commission on the sale price fixed by Rahul for each laptop. As Government of India put restrictions on import of Laptops, Rahul thought that the prices of laptops might go up in near future and he revokes Sarthak's authority for any further sale. Sarthak, before receiving the letter at his end sold 5 laptops at the price fixed by Rahul. Sarthak asked for 11% commission on the sale of 5 Laptops for ₹ 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

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(i) Whether sale of laptops after revoking Sarthak's authority is binding on Rahul?

(ii) Whether Sarthak will be able to recover his commission from Rahul, if yes, what will be the amount of such commission?

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

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

(i) By filing a case against Preeti, a minor for recovery of outstanding amount with interest?

(ii) By filing a case against Mr. Ram, father of Preeti for recovery of outstanding amount?

(iii) By filing a case against Preeti, a minor for recovery of outstanding amount after she attains majority?

5. (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?

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(ii) Mr. A offered to sell 25 chairs to Mr. B @ ₹ 1,500 per chair on 12th February 2024. A promised B that he would keep the offer open till 15th February 02.2024. However, on 13th February 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 14th February 2024.

Advise, with reference to provisions of the Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A?

(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?

6. Mr. Sohan, a wealthy individual provided a loan of ₹ 80,000 to Mr. Mukesh on 26th February, 2025. The borrower, Mr. Mukesh asked for a further loan of ₹ 1,50,000.

Mr. Sohan agreed but provided the loan in parts on different dates. He provided ₹ 1,00,000 on 28th February, 2025 and remaining ₹ 50,000 on 3rd March, 2025.

On 10th March, 2025 Mr. Mukesh while paying off part ₹ 75,000 to Mr. Sohan insisted that the lender should adjust ₹ 50,000 towards the loan taken on 3rd March, 2025 and balance as against the loan on 26th February, 2025.

Mr. Sohan 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. Mukesh 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?

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

7. 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 did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y has given loan to Mr. G of ₹ 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 as per the Indian Contract Act, 1872?

8. Some objects and consideration are unlawful. Define any six with reference to provisions of the Indian Contract Act, 1872.

The Sale of Goods Act, 1930

9. 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.

10. "Delivery of goods is an essential aspect of a contract of sale." Discuss the statement. Explain the various kinds of delivery recognised under the Sale of Goods Act, 1930.

11. 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?

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Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930.

12. Ritvik sold 500 bags of wheat to Anoj. Each bag contains 50 Kilograms of wheat. Ritvik sent 450 bags by road transport and Anoj himself took remaining 50 bags. Before Anoj receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ritvik being still unpaid, stops the bags in transit. The official receiver, on Anoj's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

13. Mr. Mukesh was running a shop selling good quality washing machines. Mr. Vivaan came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Mukesh showed him a particular machine which Mr. Vivaan liked and paid for it. Later on, when the machine was delivered to Mr. Vivaan's house, it was found that it was the wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Mukesh about the delivery of the wrong machine. Mr. Mukesh refused to exchange the same, saying that the contract was complete after the delivery of the washing machine and payment of price. With reference to the provisions of the Sale of Goods Act, 1930, discuss whether Mr. Mukesh is right in refusing to exchange the washing machine.

14. Neeraj entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Aakash. Rahul already delivered 600 litres out of 1000 litres to Neeraj but when remaining 400 litres was ready to deliver, Aakash denied fixing the price of mustard oil. Rahul asked Neeraj to return the oil already delivered and avoid the delivery of 400 litres. Neeraj sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930.

The Indian Partnership Act, 1932

15. With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner.

16. Ram and Sarthak are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram

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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.

17. Mr. Ram and Mr. Rakesh are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2023. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500.

    Mr. John said that Mr. Ram and Mr. Rakesh are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹ 3000 to Mr. John?

18. 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/-.

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The Limited Liability Partnership Act, 2008

19. (i) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

(ii) What are the effects of registration of Limited Liability Partnership?

The Companies Act, 2013

20. 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 had already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

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

21. (i) Mr. Vijay sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Vijay filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim?

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(ii) Alfa school is a section 8 company which started imparting education on 1.4.2015, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

22. (i) What do you mean by 'Common Seal'? Is it necessary for a company to have Common Seal? Discuss as per provisions of the Companies Act, 2013.

(ii) Whether the phrases "Company Limited by Shares" and "Company Limited by Guarantee" are same? If not, explain any four differences between these two according to provisions of the Companies Act, 2013.

The Negotiable Instruments Act, 1881

23. Advik purchased a mobile from Bhanu. He issued a promissory note to Bhanu which was payable on demand but no specific place for payment was mentioned on it. On maturity, Bhanu did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether Advik would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881?

24. Shiva gave a gift of ₹ 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act?

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SUGGESTED ANSWERS/HINTS

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

The Process of Making a Law

- When a law is proposed in parliament, it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

2. 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)]

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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.

3. **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,

(i) The revocation of Sarthak's authority becomes effective only when it is communicated to and received by Sarthak. Since Sarthak had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rahul was still valid. Hence, the sale of laptops conducted by Sarthak is binding on Rahul.

(ii) Sarthak 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 Rahul.

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Amount of Commission: Sarthak sold 5 laptops at the price fixed by Rahul, which is ₹1 lakh each. The total sales amount to ₹5 lakh. The agreed commission rate is 11% i.e. ₹ 55,000.

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

(i) By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Preeti, 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. Mittal will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Preeti.

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

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

5. (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.

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(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.

6. 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. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.

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(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.

Hence in case Mr. Mukesh fails to specify the manner of appropriation of debt on part repayment, Mr. Sohan 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. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

7. (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 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)].

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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.

8. Some objects and consideration are unlawful

Under Section 23 of the Indian Contract Act, 1872 in each of the following cases the consideration or object of an agreement is said to be unlawful:

(i)	**When consideration or object is forbidden by Law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.
(ii)	**When consideration or object are of such a nature that if permitted, it would defeat the provisions of Law:** If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law, the agreement is void.
(iii)	**When it is Fraudulent:** Agreements which are entered into to promote Fraud are Void. **Example:** A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud are unlawful.
(iv)	The general term **"injury"** means criminal or wrongful harm. In the following example, the object or consideration is unlawful as it involves injury to the person or property of another. **Example:** An agreement to print a book in violation of another's copyright is void, as the object is to cause injury to

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	the property of another. It is also void as the object of the agreement is forbidden by the law relating to copyright.
(v)	**When consideration is Immoral:** The following are the examples of agreements where the object or consideration is unlawful, being immoral.
(vi)	**When consideration is opposed to Public Policy:** The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community.

9. (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.

10. **Delivery - its forms and derivatives:** Delivery means voluntary transfer of possession from one person to another [Section 2(2)]. 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.

    Forms of delivery: Following are the kinds of delivery for transfer of possession:

    - Actual delivery
    - Constructive delivery
    - Symbolic delivery

    (i) Actual delivery: When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person

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authorised to hold goods on behalf of the buyer. This is the most common method of delivery.

(ii) **Constructive delivery:** When transfer of goods is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)

Constructive delivery takes place when a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on buyer's behalf.

(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. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.

11. According to Section 24 of the Sale 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

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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.

12. **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.

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, Anoj, the buyer becomes insolvent, and 450 bags are in transit. Ritvik, the seller, can stop the goods in transit by giving a notice of it to Anoj. The official receiver, on Anoj's insolvency cannot claim the bags.

13. According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to a sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Vivaan informed Mr. Mukesh that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Mukesh was unfit for the purpose for which Mr. Vivaan wanted the machine.

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vivaan can either repudiate the contract or claim the refund of the price

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paid by him or he may require Mr. Mukesh to replace the washing machine with desired one.

14. By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be fixed by the contract, or agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third party in the following manner:

(a) 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.

(b) 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.

(c) However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

In the instant case, Neeraj contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Aakash. After, Rahul delivered 600 litres Aakash denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Neeraj sued Rahul for non-delivery of remaining 400 litres mustard oil.

On the basis of above provisions and facts, Neeraj is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

15. 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.

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(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.

16. 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.

17. According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved that:

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

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On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Rakesh cannot be said under partnership as they are teachers in a school and just purchased a flat jointly.

By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim the rest of ₹ 1500 from Mr. Rakesh.

18. (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 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

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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.

19. (i) Partners (Section 5 of Limited Liability Partnership Act, 2008): Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

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

(ii) Effect of registration (Section 14 of Limited Liability Partnership Act, 2008): On registration, a LLP shall, by its name, be capable of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

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20. (i) Fate of the suit and the liability of Mr. R towards the company: Doctrine of the Indoor Management

According to the Doctrine of 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 the necessary enquiry, if the transaction is not in the ordinary course of business.

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

21. (i) According to the decision taken in the case of *Salomon Vs. Salomon & Co. Ltd.,* a company has a separate legal entity. A company is different from its members. Further, according to the decision taken in the case of *Macaura Vs. Northern Assurance Co. Ltd.,* a member or creditor does not have any insurable interest in the property of the

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company. Members or creditors of the company cannot claim ownership in the property of company.

On the basis of the above provisions and facts, it can be said that Mr. Vijay and CPL Private Limited are separate entities. Mr. Vijay cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Vijay for the claim for the loss of stock by fire.

(ii) Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(a) 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.

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

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

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(c) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

22. (i) Meaning of Common Seal: Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

Is it necessary for a Company to have a Common Seal?

Having a common seal is optional now. The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 of the Companies Act, 2013 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that 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.

(ii) Whether the phrases 'Company Limited by Shares" and "Company Limited by Guarantee" are same?

No, the phrases 'Company Limited by Shares' and 'Company Limited by Guarantee' are not same.

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Distinction between "Company Limited by Shares" and "Company Limited by Guarantee" is tabulated as under:

S. No.	Company Limited by Shares	Company Limited by Guarantee
1.	It is defined under Section 2(22) of the Companies Act, 2013.	It is defined under Section 2(21) of the Companies Act, 2013.
2.	It is a company when the liability of the members of a company is limited by its Memorandum of Association to the amount (if any) unpaid on the shares held by them.	It is a company having the liability of its members limited by the Memorandum to contribute to the assets of the company in the event of its being wound up.
3.	The members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions.	The members may be called upon to discharge their liability at any time, either during the company's life-time or during its winding up.
4.	This company can raise its initial working funds from its members.	This company does not raise its initial working funds from its members.
5.	For meeting the debts of the Company, the shareholder may be called upon to contribute only to the extent of the amount which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the Company's debt.	The liability of a member of a guarantee company is limited to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

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23. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. However, where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

In the instant case, Advik issued a promissory note to Bhanu payable on demand without mentioning any specific place for payment. On maturity, the promissory note was not presented by Bhanu for payment.

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

24. Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

In the instant case, Shiva gifted a cheque of ₹ 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

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