

Mock Test Paper - Series I: April, 2025

Date of Paper: 23rd April, 2025

Time of Paper: 2 P.M. to 5 P.M.

FOUNDATION COURSE

PAPER 2: BUSINESS LAWS

Question No. 1 is compulsory.

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

(Time allowed: 3 Hours)

(100 Marks)

1. (a) (i) Kashish was running a business of artificial jewellery since long. He sold his business to Naman. Naman made an agreement with Kashish not to carry on the business of artificial jewellery and real diamond jewellery in that area and for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed suit against Kashish for closing the business of real diamond business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of the Indian Contract Act, 1872? **(4 Marks)**
- (ii) Albert obtained 2 loans of ₹ 3,00,000 and ₹ 4,00,000 respectively from a reputed Bank. Out of these 2 loans, 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 Marks)**
- (b) Parasnath Infraheight Limited is a public company and having 215 members of which 20 members were employees in the company during the period 1st June, 2022 to 30th June, 2024. They were allotted shares in Parasnath Infraheight Limited on 1st April, 2018 which are held by them till today i.e. 31st August 2024. Now, the company wants to convert itself into a private company. State with reasons, whether Parasnath Infraheight Limited is required to reduce the number of members under the provisions of the Companies Act, 2013? **(7 Marks)**

- (c) "Indian Partnership Act does not make the registration of firms compulsory, nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India?

(6 Marks)

2. (a) Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. The company informed that tins would be packed in the boxes each containing 50 tins. On delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part of the contract. Amjuice Ltd. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930?

(7 Marks)

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

(7 Marks)

- (c) "Both Limited Liability Partnerships and Limited Liability Companies offer limited liability protection, yet they differ significantly in structure and governance. Discuss these differences in detail."

(6 Marks)

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

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

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

(7 Marks)

- (b) (i) Sooraj Pharma Ltd., a public company, its Articles of Association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Smith, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ₹ 25,00,000 in name of the company.

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

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

- (ii) XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹ 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company?

(3 Marks)

- (c) "What is meant by a void contract and a voidable contract? Explain the differences between the two." **(6 Marks)**

4. (a) Nitin appointed Shiv as his agent to transport apples from Shimla to Delhi. Due to heavy rain in near Shimla, Shiv was stranded for more than seven days. Shiv was not in position to contact with Nitin. To save Nitin from loss, Shiv sold all the apples in the nearby market below the market rate where he was stranded. Explain with reference to the Indian Contract Act 1872, can Nitin recover the loss from Shiv as Shiv had acted beyond his authority? **(7 Marks)**

- (b) "Explain the concept of 'presentment for payment' under Section 64 of the Negotiable Instruments Act, 1881. What are the consequences of non-presentment?" **(7 Marks)**

- (c) What do you understand by Law? Also explain, how is Law enforced in a legal system? **(6 Marks)**

5. (a) 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 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? **(7 Marks)**

- (b) "Partners in a firm may be classified into various types based on the extent of their liability." Describe the following:

(i) Dormant Partner

- (ii) Nominal Partner
 - (iii) Partner in profits only
 - (iv) Partner by holding out **(7 Marks)**
- (c) "What do you understand by a quasi-contract? Under what circumstances does it arise according to the Indian Contract Act, 1872?" **(6 Marks)**
6. (a) Sachin bought 1000 Kgs sugar from Saurabh for ₹ 40,000 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 by Sachin. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin? **(7 Marks)**
- (b) "Explain the circumstances under which a surety may be discharged by revocation of the contract of guarantee under the Indian Contract Act, 1872." **(6 Marks)**
- (c) "Explain the rules relating to the delivery of goods under the Sale of Goods Act, 1930" with reference to the following:
- (i) Effect of part delivery
 - (ii) Place of delivery
 - (iii) Delivery of wrong quantity." **(7 Marks)**

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PAPER 2: BUSINESS LAWS

ANSWERS

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

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

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

- (ii) 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 2 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). Robert objected that repayment amount should be first adjusted to the guaranteed loan.

On the basis of 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.

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

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

Provided further that—

- (A) persons who are in the employment of the company; and
 - (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

In the given problem, Parasnath Infraheight Limited is a public company and wants to convert itself into a private company. It is having 215 members out of which 20 members were employees during the period 1st June, 2022 to 30th June, 2024. These members were members in the company from 1st April, 2018 which are held by them till date i.e. 31st August, 2024.

Following the provisions of Section 2(68) of the Act, 20 members were employees of the company, but they were not employee at the time of getting membership

and nor on existing date i.e. 31st August, 2024. Hence, they will be considered as members for the purpose of the limit of 200 members. Therefore, the company is required to reduce the number of members before converting it into a private company.

- (c) It is true to say that the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

Following are consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

2. (a) By virtue of provisions of Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the

goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase. If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the given case, Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. that would be packed in the boxes each containing 50 tins. Amjuice Ltd. delivered substantial part in boxes containing only 30 tins. Priyansh rejected the whole order while Amjuice Ltd. sued Priyansh for the recovery of price.

On the basis of above, the sale of apple juice tins was based on sale by description, but actual delivery was not as per the description given by seller at the time of contract. Hence, Priyansh is correct in rejection of the goods.

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

- (i) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- (ii) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
- (iii) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-
 - he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

- and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (iv) the address for correspondence till its registered office is established;
- (v) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
- (vi) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and
- (vii) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(c) Distinction between LLP and Limited Liability Company

S. No.	Basis	Limited Liability Partnerships (LLP)	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability	Name of the public company to contain the word "limited" and

		partnership” or “LLP” as suffix.	Pvt. Co. to contain the word “Private limited” as suffix.
5.	No. of members/ partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	Liability of members/ partners	Liability of a partner is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by the board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

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

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

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

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

The answers are:

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

(b) (i) **Doctrine of Indoor Management**

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

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

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

Thus,

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

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

- (ii) According to Section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

- (c) **Void Contract:** As per Section 2 (j) of the Indian Contract Act, 1872, “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.

Voidable Contract: Section 2(i) defines that “an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract”.

The distinction between a Void Contract and a Voidable Contract are as under:

S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it	An agreement which is enforceable by law at the option of one or more of the parties thereto, but

		ceases to be enforceable.	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 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.

4. (a) Section 189 of the Indian Contract Act, 1872 provides an agent has authority, in an emergency; to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.

- (iii) The agent should have acted bonafide and for the benefit of the principal.
- (iv) The agent should have adopted the most reasonable and practicable course under the circumstances, and
- (v) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

In the instant case, Nitin appointed Shiv as his agent to transport apples from Shimla to Delhi but due to heavy rain in near Shimla, he has to stop for more than seven days. Shiv sold all the apples in the nearby market below the market rate where he was stranded in fear that the apples may perish.

From the above facts, it is clear that an agency by necessity has come into existence between Shiv and Nitin because there was an actual and definite necessity for Shiv to act on behalf of Nitin. Shiv sold the apples at the rate lower than market rate to protect the Nitin from heavy loss. Hence, Shiv is not liable to Nitin for loss.

(b) Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]

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

In default of such presentment, the other parties thereto are not liable thereon to such holder.

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

Exception: 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.

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification.

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

- (c) **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.

Enforcement of Law:

- After a law is passed in parliament it has to be enforced. Somebody should monitor whether the law is being followed. This is the job of the executive.
- Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority.
- For this purpose, government functions are distributed to various ministries. Some of the popular Ministries are the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and so on. These Ministries are headed by a minister and run by officers of the Indian administrative and other services.
- The Government of India exercises its executive authority through a number of Government Ministries or Departments of State. A Ministry is composed of employed officials, known as civil servants, and is politically accountable through a minister.
- Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.

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

- (A) The whole of the price has not been paid or tendered.
- (B) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

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

- (a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)
- (b) where goods have been sold on credit but the term of credit has expired; or
- (c) where the buyer becomes insolvent.

In the instant case, Mr. Ganesh purchased 1000 Kgs 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 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. Hence, Mr. Shankar had to perform his promise of supplying 1000 Kgs 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.

- (b) **Sleeping or Dormant Partner:** It is a person who is a partner by agreement, and who does not actively take part in the conduct of the partnership business.

They share profits and losses and are liable to the third parties for all acts of the firm. They are, however not required to give public notice of their retirement from the firm.

Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however, liable to third parties for all acts of the firm.

Partner in profits only: A partner who is entitled to share the profits only without being liable for the losses is known as the partner for profits only and also liable to the third parties for all acts of the profits only.

Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from

denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

- (c) **Quasi Contracts:** Under certain special circumstances, obligation 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 with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

Under the provisions of the Indian Contract Act, 1872, the relationship of quasi contract is deemed to have come to exist in five different circumstances. In none of these cases there comes into existence any contract between the parties in the real sense. Due to peculiar circumstances in which they are placed, the law imposes in each of these cases the contractual liability.

- (i) **Claim for necessities supplied to persons incapable of contracting (Section 68):** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities 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.

To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

- (ii) **Payment by an interested person (Section 69):** 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.
- (iii) **Obligation of person enjoying benefits of non-gratuitous act (Section 70):** In term of section 70 of the Act "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered".

It thus follows that for a suit to succeed, the plaintiff must prove:

- (i) that he had done the act or had delivered the thing lawfully;
 - (ii) that he did not do so gratuitously; and
 - (iii) that the other person enjoyed the benefit.
- (iv) **Responsibility of finder of goods (Section 71):** 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
 - (ii) no right to appropriate the goods and
 - (iii) to restore the goods if the owner is found.
- (v) **Money paid by mistake or under coercion (Section 72):** "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

In all the above cases the contractual liability arose without any agreement between the parties.

6. (a) According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:
- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
 - (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
 - (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

In the instant case, Sachin bought 1000 Kgs sugar from Saurabh for ₹40,000 on three months credit and issued a Promissory Note payable after 3 months. On due date, the Promissory Note was dishonoured by Sachin. Saurabh filed suit for

the recovery of the amount plus fees of advocate paid by him for defending the suit.

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

- (b) A surety is said to be discharged when his liability as surety comes to an end. The various modes of discharge of surety are as below:
- (i) By revocation of the contract of guarantee.
 - (ii) By the conduct of the creditor, or
 - (iii) By the invalidation of the contract of guarantee.

By revocation of the Contract of Guarantee

- (a) **Revocation of continuing guarantee by Notice (Section 130 of the Indian Contract Act, 1872):** The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

A specific guarantee can be revoked only if liability to principal debtor has not accrued.

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

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

- (c) (i) **Effect of part delivery (Section 34 of the Sale of Goods Act, 1930):** A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention

of severing it from the whole, does not operate as a delivery of the remainder.

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

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

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

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

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

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