



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 turn up. 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 be 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 (*Guinness 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.