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Chapter 1: Indian Regulatory Framework

Study Material

Que 1: Explain Role of SEBI?

Ans. The Securities and Exchange Board of India (SEBI)

- is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

Mtp3 June 2024

Que 2: Write a short note on the following:

(i) Ministry of Corporate Affairs (MCA)

(i) Ministry of Corporate Affairs (MCA)

Ans: MCA is an Indian Government Ministry which primarily concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016. It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector. The Ministry is mostly run by civil servants of the ICLS cadre. These officers are elected through the Civil Services Examination conducted by Union Public Service Commission. The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

Rtp Jan 2025

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

Ans.

(i) Supreme Court

The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

(ii) High Court

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, 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.

Chapter 2: The Indian Contract Act, 1872

Unit-1 Nature of Contract

Rtp Dec 2023

Ques 1: 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.

(i) The given agreement is valid.

Ans. 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 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.

Mtp2 Dec 2023

Ques 2: Mr. Nikhil has 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 latest by 31st January, 2023. On 31st January, 2023, Mr. Nikhil observed that only 20% to 30% work has been completed. He decided to cancel the contract with M/s Sherry Fine Interiors. On cancellation of the contract, M/s Sherry Fine Interiors filed a suit against Mr. Nikhil for recovery of the cost which it has incurred on the interior work. Mr. Nikhil argued that M/s Sherry Fine Interiors did not complete the work within the time as per contract and further the work done till 31st January, 2023 by M/s Sherry Fine Interiors was of no use for him as he has to appoint a new interior designer. Explain, whether Mr. Nikhil is liable to pay the cost of work done by M/s Sherry Fine Interiors under the provisions of Indian Contract Act, 1872?

5 Marks

Ans. Section 2(i) of Indian Contract Act, 1872 provides 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. Further, when a party to a contract promise to perform a work within a specified time, could not perform within 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 given problem, the contract is voidable at the option of Mr. Nikhil as work is not completed within the time agreed in the contract. Further, Mr. Nikhil 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.

Unit-2 Consideration

Study Material, Rtp Nov 2020, Rtp May 2021, Mtp1 Nov 2022

Ques 1: To form a valid contract, consideration must be adequate". Comment.

5 Marks

Ans. The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (**Bolton v. Modden**).

Consideration must however, be something to which the law attaches value though it needs not be equivalent in value to the promise made. According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Rtp Nov 18, Mtp1 May 19, Past Paper Nov 2019, Mtp2 May 2021

Ques 2: Define consideration. State the characteristics of a valid consideration.

7 Marks

Ans. Definition of Consideration-Section 2(d): "When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise"

The essential characteristics of a valid consideration are as follows:

- a. Consideration must move at the desire of the promisor.
- b. It may proceed from the promisee or any other person on his behalf.
- c. It may be executed or executory. It may be past, present or future.
- d. It must be real and have some value in the eyes of law.
- e. It must not be something which the promisor is already legally bound to do.
- f. It must not be unlawful, immoral or opposed to public policy.
- g. Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.
- h. It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

Mtp2 May 2019, Rtp May 2019, Rtp Nov 2019, Past Paper Jan 2021, Past Paper May 2022

Ques 3: "No consideration, no contract" Comment.

Ans. No consideration, no contract: Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility.

Example: A promise to pay ₹100 to B. This promise cannot be enforced by B because he is not giving anything to A for this promise. No consideration, no contract is a general rule. However, Section 25 of the Indian Contract Act provides some exceptions to this rule, where an agreement without consideration will be valid and binding.

These exceptions are as follows:

- (1) **Natural Love & Affection [Section 25 (1)]:** Where an agreement 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 the parties standing in near relation to each other, the agreement is enforceable, even though the consideration is absent.
- (2) **Compensation for past voluntary service [Section 25 (2)]:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.
- (3) **Promise to pay time barred Debt [Section 25 (3)]:** The agreement is valid provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf.
- (4) **Completed Gift - [Explanation 1 to Section 25]:** As per explanation 1 to section 25, nothing in section 25 shall affect the validity as between donor and donee, on any gift actually made. Thus, gifts do not require any consideration.

- (5) **Agency (Section 185)**: No consideration is necessary to create an agency.
- (6) **Bailment (Section 148)**: No consideration is required to affect the contract of bailment.
- (7) **Charity**: If a promise undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

Rtp May 2018, Rtp May 2020

Ques 4: "Only a person who is party to a contract can sue on it". Explain this statement and describe its exceptions, if any.

Ans. Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. Thus, the concept of stranger to consideration is valid and is different from stranger to a contract. The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions.

In other words, even a stranger to a contract may enforce a claim in the following cases:

- (1) **In the case of trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (2) **In the case of a family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- (3) **In the case of certain marriage contracts**, expenses made on the partition of the Hindu a female member can enforce a provision for marriage Undivided Family.
- (4) **In the case of assignment of a contract**, when the benefit under a contract has been assigned; the assignee can enforce the contract.
- (5) **Acknowledgement or estoppel** - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
- (6) **In the case of covenant running with the land**, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.
- (7) **Contracts entered into through an agent**: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Unit-3 Other Essential Elements of a Contract

Study Material, Mtp May 2018, Mtp Nov 2020, Past Paper Dec 2021

Ques 1: Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ₹2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ₹15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872. **4 Marks**

Ans. According to **Section 11** of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [**Mohori Bibi Vs Dharmo Das Ghose 1903**]. **Section 68** of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property.

Rtp May 2018, Mtp2 Nov 2018, Past Paper Nov 2019, Mtp1 Nov 2021

Ques 2: Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872.

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

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

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Past Paper Dec 2020

Ques 3: Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. **7 Marks**

Ans: Definition of Fraud under Section 17 of the Indian Contract Act, 1872: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

As per Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

Mtp1 Jan 25

Ques 4: Explain the term Wagering agreement in the light of the Indian Contract Act, 1872. Also, explain some transactions resembling wagering transaction but which are not void. **(6 Marks)**

Ans: Wagering agreement (Section 30 of the Indian Contract Act, 1872): An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

Transactions resembling with wagering transaction but are not void

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.
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.
Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid.
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.

Unit-4 Performance of Contract

Study Material, Rtp Nov 2019, Mtp Nov 2020

Ques: 1 X, Y and Z jointly borrowed ₹50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- (i) Y can recover the contribution from X and Z,
- (ii) Legal representatives of X are liable in case of death of X,
- (iii) Y can recover the contribution from the assets, in case Z becomes insolvent. **4 Marks**

Ans. Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfil the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several".

Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- (ii) Legal representative of X is liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y also can recover the contribution from Z's assets

Study Material, Mtp2 Nov 2021, Rtp June 2023

Ques 2: Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020.

- (i) ₹12,120 which was due in May 2016.
- (ii) ₹5,650 which was due in August 2018
- (iii) ₹9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

- (i) A cheque of ₹9,680 (ii) A cheque of ₹15,000

Advice under the provisions of the Indian Contract Act, 1872.

6 Marks

Ans. Provision: If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

Fact of the case: In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of ₹9,680 will be appropriated against the bill of ₹9,680 which was due in May 2019. Cheque of ₹15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Conclusion: Hence, Mr. Girdhari can appropriate the same against the debt of ₹12,120 which was due in 2016 and balance against ₹5650 which was due in August 2018.

Past Paper Nov 2018, Mtp1 May 2019, Mtp2 May 2021, Mtp1 June 2023

Ques 3: Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and

the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹50,000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

OR

Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed a refund of 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

4 Marks

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

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

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

Conclusion: Hence, the contention of Mr. Y is correct.

Past Paper Dec 2021, Mtp2 Nov 2022

Ques 4: Explain any five circumstances under which contracts need not be performed with the consent of both the parties.

7 Marks

Ans. 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 rescission. 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).



Unit-5 Breach of Contract and Its Remedies

Study Material, Rtp Nov 2018 Mtp Nov 2019, Mtp1 May 2019, Mtp Nov 2020, Mtp July 2021, Mtp Nov 2021, Mtp2 May 2021, Rtp May 2022, Mtp1 June 2023

Ques 1: "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts. **7 Marks**

Ans. An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in *Frost v. Knight and Hochster v. DelaTour*.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. **Further he gets an option:**

→ To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or

→ He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the, contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Study Material, Rtp May 2021, Past Paper May 2022

Ques 2: "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant Amount stipulated and is clearly unconscionable and has no comparison to the loss secured by the parties". Explain. **5 Marks**

Ans. Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss secured by the parties.

In terms of **Section 74** of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

Explanation to Section 74:

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of **Section 74**, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

Sri Chunni Lal vs. Mehta & Sons Ltd (Supreme Court) Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then, the court has powers to reduce the amount if it considers it reasonable to reduce.

Mtp1 Nov 2018, Past Paper May 2018, Mtp Nov 2019, Rtp May 2020

Ques 3: M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract, which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation, which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. **6 Marks**

Ans. Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it.

Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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

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

Unit-6 Contingent and Quasi Contracts

Study Material, Rtp Nov 2019, Rtp Nov 2020, Mtp2 Nov 2021, Past Paper Dec 2021, Mtp2 May 2022

Ques 1: Explain the-term 'Quasi Contracts' and state their characteristics.

6 Marks

Ans. 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 obligation imposed by law are referred to as 'Quasi-contracts' Such a contract resembles with a contract so far, a 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 liquidate sum of money.
- (4) Such a right is available against specific person(s) and not against the whole world.
- (5) A suit for its breach may be filed in the same way as in case of a complete contract.

Mtp1 Nov 2022, Mtp2 May 2023

Ques 2: What is Quasi Contract? Elaborate the cases which are deemed as Quasi Contract. 6 Marks

Ans. 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.

The following are the cases which are deemed as Quasi Contract:

(a) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his 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.

(b) 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.

(c) 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".

(d) 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.

(e) 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".

Past Paper Nov 2018, Rtp May 2019, Rtp May 2020, Mtp Nov 2020

Ques 3: What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872.

6 Marks

Ans. Provision: [Indian Contract Act, 1872]: Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events.

A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happening (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen.

Example: M contracts to pay N ₹20,000 if he is elected President of a particular association. This is a contingent contract.

The essential characteristics of a contingent contract may be listed as follows:

- There must be a contract to do or not to do something,
- The performance of the contract must depend upon the happening or non-happening of some event.
- The happening of the event is uncertain.
- The even on which the performance is made to depend upon is an event collateral to the contract. i.e., it does not form part of the reciprocal promises which constitute the contract. The even should neither be a performance promised, nor the consideration for the promise.
- The contingent even should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

Rtp May 2019, Mtp Nov 2020, Rtp May 2020, Past Paper July 2021, Mtp1 May 2022

Ques 4: Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.

6 Marks

Ans. Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happen (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. **Example:** A contracts to pay B ₹10,000 if he is elected President of a particular association. This is a contingent contract.

The essential characteristics of a contingent contract may be listed as follows:

- There must be a contract to do or not to do something the, performance of the contract must depend upon the happening or non- happening of some event.
- The happening of the event is uncertain.
- The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.
- The contingent event should not be the mere will of the promisor. However, the event is within the promisor's will, but not merely his will, it may be a contingent contract.

The rules regarding the contingent contract are as follows:

- Contingent contract dependent on the happening of an uncertain future cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void. (Section 32).
- Where a contingent contract is to be performed if a particular event does not happen performance can be enforced only when happening of that event becomes impossible (Section 33).
- If a contract is contingent upon, how a person will act at an unspecified time the event shall be considered to 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. (Section 34, 35).
- The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

Mtp2 Jan 25

Ques 5: 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? **(4 Marks)**

Ans: 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.



Unit-7 Contract of Indemnity and Guarantee

Study Material, Mtp May 2019, Mtp Nov 2019, Mtp Nov 2021

Ques 1: Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid? 4 Marks

Ans. Section 124 of the Indian Contract Act, 1872 states that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".

Section 126 of the Indian Contract Act, 1872 states that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default" is called a "contract of guarantee".

The conditions under which the guarantee is invalid or void is provided in section 142, 143 and 144 of the Indian Contract Act.

These include:

- (i) Guarantee obtained by means of misrepresentation.
- (ii) Guarantee obtained by means of keeping silence as to material circumstances.
- (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

Study Material, Past Paper Nov 2019

Ques 2: 'C' advances to 'B', 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth 2,00,000 without knowledge of 'A'. 'C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues' 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth 80,000, under the Indian Contract Act, 1872. 4 Marks

Ans. Surety's right to benefit of creditor's securities: According to section 141 of the Indian Contract Act, 1872, 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.

In the instant case, C advances to B, 2,00,000 rupees on the guarantee of A. C has ₹ also taken a further security for 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. 80,000 and will remain liable for balance 1,20,000.

Past Paper Nov 2020

Ques 3: Distinguish between a contract of Indemnity and a contract of Guarantee as per The Indian Contract Act, 1872. 4 Marks

Ans.

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 party's creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to act	The indemnifier need not act at the Request of indemnity holder	The surety acts at the request of principal debtor.

Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor

Rtp May 2022, Mtp1 May 2023

Ques 4: 'Surendra' guarantees 'Virendra' for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March, 2021. 'Virendra' supplied goods of Rs. 30,000 on 01.03.2021 and of Rs. 20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of 'Surendra', 'Virendra' further supplied goods of Rs. 40,000. On default in payment by 'Jitendra' on due date, 'Virendra' sued on legal heirs of 'Surendra' for recovery of Rs. 90,000. Describe, whether legal heirs of 'Surendra' are liable to pay Rs. 90,000 under provisions of Indian Contract Act 1872. What would be your answer, if the estate of 'Surendra' is worth of Rs. 45,000 only?

Ans. 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, 'Surendra' was surety for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March'2021. 'Virendra' supplied goods of Rs. 30,000, Rs. 20,000 and of Rs. 40,000 on 01.03.2021, 03.03.2021 and 10.03.02021 respectively. 'Surendra' died in a road accident but this was not in the knowledge of 'Virendra'. When 'Jitendra' defaulted in payment, 'Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. Rs. 90,000.

On the basis of above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for Rs. 50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

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

Mtp1 Jan 25

Ques 5: Rahul owns an electronics store. Pankaj visited the store to buy a water purifier priced at ₹ 54,000/ -. He specifically requested Rahul for a purifier with a copper filter. As Pankaj wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, Rahul demands a guarantor for the transaction. Sooraj (a friend of Pankaj) came forward and gave the guarantee for payment of water purifier. Rahul sold Pankaj, a water purifier of a specific brand. Pankaj made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act, 1872, the liability of Sooraj as a guarantor to pay the balance price of water purifier to Rahul.

What will be your answer, if Rahul sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither Pankaj nor Sooraj was aware of this fact and upon discovering the truth, Pankaj refused to pay the price. In response to Pankaj 's refusal, Rahul filed the suit against Sooraj, the guarantor. Explain with reference to the Indian Contract Act, 1872, whether Sooraj is liable to pay the balance price of water purifier to Rahul? (7 Marks)

Ans: 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, Sooraj has given a guarantee for Pankaj 's payment obligation towards Rahul. When Pankaj defaulted after making four monthly instalments and became insolvent, Sooraj '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 Pankaj failed to pay the remaining instalments due to insolvency, Sooraj, as the guarantor, is liable to pay the balance price of the water purifier to Rahul. In the given situation, Sooraj will have to pay the balance amount of ₹ 30,000 to Rahul. $[54,000 - (4 \times 6,000)]$

In the second situation, Rahul 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 (Rahul), 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.

Consequently, Sooraj cannot be held liable to pay the balance price of the water purifier to Rahul.

Mtp1 Jan 25

Ques 6: Mr. R extended a loan to Mr. D with X, Y, and Z as sureties. Each surety executed a bond with varying penalty amounts, X with a penalty of ₹ 10,000, Y with ₹ 20,000 and Z with ₹ 40,000, in the event of Mr. D's failure to repay the borrowed money to Mr. R. Examine the liabilities of the sureties in accordance with the Indian Contract Act, 1872, when Mr. D defaults to the tune of ₹ 42,000. Additionally, assess the situation, if there is no contractual arrangement among the sureties. (4 Marks)

Ans: As per section 146 of the Indian Contract Act, 1872, when two or more persons are co-sureties for the same debt either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Section 147 provides that the principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

In the given question, Mr. D makes a default of ₹ 42,000, and X, Y and Z as sureties have executed the bond with varying penalty amounts. Hence, X is liable to pay ₹ 10,000, and Y and Z ₹ 16,000 each.

In the given case, if there is no contractual arrangement among the sureties, they would be liable for equal contribution. Hence, X, Y and Z will be liable to pay ₹ 14,000 each.

Unit 8 Bailment and Pledge

Study Material, Mtp May 2020, Past Paper May 2021, Past Paper Nov 2021

Ques 1: Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening, she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? **4 Marks**

Ans: Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149.

Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

MTP Nov 2021

Ques 2: On the basis of reward, what are various categories of bailment? **4 Marks**

Ans. On the basis of reward, bailment can be classified into two types:

(i) Gratuitous Bailment: The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.

(ii) Non-Gratuitous Bailment: Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

Unit 9 Agency

Study Material, Past Paper May 2018, Rtp May 2018, Mtp Nov 2019, Past Paper May 2021

Ques 1: Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority? **3 Marks**

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

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes and can decide the time, date and place of sale, not necessarily as per instructions on the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Study Material, Rtp May 2018, Mtp May 2019, Past Paper May 2020

Ques 2: Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for 20 lakhs in the name of a nominee and then purchased it himself for 24 lakhs. He then sold the same house to Mr. Ahuja for 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain. **4 Marks**

Ans. The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

(1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

(2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Study Material, Past Paper May 2018, Mtp May 2022

Ques 3: ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim? **4 Marks**

Ans. To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

Past Paper Nov 2020

Ques 4: X has made an agency agreement with Y to authorize him to purchase goods on the behalf of X for the year 2020 only. The agency agreement was signed by both and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum up to the value of Rs. 10 lakhs only. In the month of April 2020, Y has purchased a single item of Rs. 12 lakhs from Z as an agent of X. The market value of the item purchased was Rs. 14 lakhs but a discount of Rs. 2 lakhs

were given by Z. The agent Y has purchased this item due to heavy discount offered and the financial benefit to X. After delivery of the item Z has demanded the payment from X as Y is the agent of X. But X denied to make the payment stating that Y has exceeded his authority as an agent therefore he is not liable for this purchase. Z has filed a suit against X for payment. Decide whether Z will succeed in his suit against X for recovery of payment as per provisions of The Indian Contract Act, 1872. **3 Marks**

Ans. An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. An agent also cannot personally enforce contracts entered into by him on behalf of the principal. In the light of section 226 of the Indian Contract Act, 1872, Principal is considered to be liable for the acts of agents which are within the scope of his authority. Further section 228 of the Indian Contract Act, 1872 states that where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

In the given case, the agency agreement was signed between X and Y, authorizing Y to purchase goods maximum up to the value of Rs. 10 lakhs. But Y purchased a single item of Rs. 12 lakhs from Z as an agent of X at a discounted rate to financial benefit to X. On demand of payment by Z, X denied saying that Y has exceeded his authority therefore he is not liable for such purchase. Z filed a suit against X for payment.

As said above, liability remains that of the principal unless there is a contract to the contrary. The agency agreement clearly specifies the scope of authority of Y for the purchase of goods, however he exceeded his authority as an agent.

Therefore, in the light of section 228 as stated above, since the transaction is not separable, X is not bound to recognize the transaction entered between Z and Y, and therefore may repudiate the whole transaction. Hence, Z will not succeed in his suit against X for recovery of payment.

Past Paper Nov 2023

Ques 5: Rajesh obtained a loan of ` 10 lakh from Mahesh. Following this, Rajesh appointed Mahesh as his agent to facilitate the sale of his land, granting him the authority to deduct the loan amount from the proceeds of the sale. Later on, Rajesh wants to withdraw or cancel this agency arrangement. Assess the lawfulness of Rajesh's decision to revoke the above-mentioned agency, taking into account the provisions of the Indian Contract Act, 1872. **4 Marks**

Answer:

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.

In the instant case, the rule of agency coupled with interest applies. Thus, when Rajesh appointed Mahesh as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in Favor of Mahesh and the said agency is not revocable. The revocation of agency by Rajesh is not lawful.

Alternate Answer

Revocation of authority under the Indian Contract Act, 1872: 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] When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent. [Section 206] Hence, Rajesh can revoke his authority delegated to Mahesh if he (Mahesh) has not exercised any authority towards mentioned agency and no obligation arises out of it.

Past Paper Nov 2023

Ques 6: Both a sub-agent and a substituted agent are appointed by the agent. But, however, there are some points of distinction between the two. Explain any three points. **3 Marks**

Answer:

Following are the points of distinction between a sub-agent and a substituted agent:

Sub Agent	Substituted Agent
A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
The agent not only appoints a subagent but also delegates to him a part of his own duties	The agent does not delegate any part of his task to a substituted agent.
There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent
The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him.
The agent is responsible to the principal for the acts of the sub-agent	The agent is not responsible to the principal for the acts of the substituted agent.
The sub-agent has no right of action against the principal for remuneration due to him	The substituted agent can sue the principal for remuneration due to him.
Sub-agents may be improperly appointed	Substituted agents can never be improperly appointed.
The agent remains liable for the acts of the sub-agent as long as the subagency continues.	The agent's duty ends once he has named the substituted agent.

Mtp2 Jan 25

Ques 7: Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ₹ 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

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

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

Ans: When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

In the instant case,

(1) The revocation of Shyam's authority becomes effective only when it is communicated to and received by Shyam. Since Shyam had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rama was still valid. Hence, the sale of laptops conducted by Shyam is binding on Rama.

(2) Shyam is entitled to receive his commission for the sales made while he still had the authority to sell. Since he sold the laptops before receiving the revocation, he is entitled to his commission as per the initial agreement with Rama.

Amount of Commission: Shyam sold 5 laptops at the price fixed by Rama, which is ₹1 lakh each. The total sales amount to ₹ 5 lakh. The agreed commission rate is 11% i.e. ₹ 55,000.

Chapter 3: The Sales of Goods Act, 1930

Unit-1 Formation of the Contract of Sale

Past Paper May 2022, Rtp Dec 2023

Ques 1: What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. **4 Marks**

Ans. (i) **Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

(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.

Rtp Nov 2021, Past Paper May 2022, Mtp2 Dec 2022, Rtp Dec 2023, Rtp Jan 25

Ques 2: Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same.

Answer the following questions as per the Sale of Goods Act, 1930.

(i) State with reasons whether Sonal can recover the amount from the Jeweller.

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? **6 Marks**

Ans. As per **Section 4(3)** of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the **contract is called a sale**, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the **contract is called an agreement to sell** and as per **Section 4(4)**, an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller and not a sale. Even though the payment was made by Sonal, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Sonal has right to avoid the agreement to sell and can recover the price paid.

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

Unit-2 Conditions & Warranties

Mtp May 2020, Rtp Nov 2020, Mtp1 May 2021, Rtp May 2021, Past Paper Jan 2021, Past Paper July 2021, Mtp2 June 2023

Ques 1: Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.

4 Marks

Ans. Difference between Condition and Warranty

- (i) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
- (ii) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
- (iii) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- (i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- (ii) Where the buyer elects to treat the breach of condition as breach of a warranty.
- (iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Past Paper Nov 2020, Mtp1 Dec 2021

Ques 2: What is the Doctrine of 'Caveat Emptor'? What are the exceptions to the Doctrine of 'Caveat Emptor'?

4 Marks

Ans. Caveat Emptor

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

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

1. Fitness as to quality or use: Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sales of Goods Act, 1930].
2. Goods purchased under patent or brand name: In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. Goods sold by description: Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
4. Goods of Merchantable Quality: Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. Sale by sample: Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. Goods by sample as well as description: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].

7. Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

8. Seller actively conceals a defect or is guilty of fraud: Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Mtp1 Jan 25

Ques 3: Mrs. Meenu 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. Meenu 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. Mrs. Meenu 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 the requirement of the dish.

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

requirement as to the length of rice?

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

What would be your answer in case Mrs. Meenu specified her exact.

(4 Marks)

Ans: (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. Meenu 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 the instant case, Mrs. Meenu does not have any option available to her for grievance redressal.

(iii) In case Mrs. Meenu 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.

Unit-3 Transfer of Ownership and Delivery of Goods

Study Material, Rtp May 2020, Rtp 2020, Mtp Nov 2020, Mtp2 Dec 2021, Rtp Nov 2021, Mtp2 June 2023, Mtp1 June 2023

Ques 1: "Nemo Dat Quod Non Habet" - "None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

OR

Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930. **6 Marks**

Ans. Exceptions to the Rule Nemo dat Quod Non Habet: The term means, "None can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

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

- (a) if he was in possession of the goods or documents with the consent of the owner;
- (b) if the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- (c) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (Proviso to Section 27).

Mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. [section 2(9)]

(ii) Sale by one of the joint owners: If one of the several joint owners of goods have the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)

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

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

(v) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].

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

(vii) Sale under the provisions of other Acts:

(i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.

- (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Past Paper Nov 2022

Ques 2: What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. **4 Marks**

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

The essentials regarding appropriation of unascertained goods are:

- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality stated in the contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after appropriation.

Mtp May 2020, Past Paper Nov 2020, Mtp May 2020, Mtp1 Dec 2021

Ques 3: "A non-owner can convey better title to the Bonafide purchaser of goods for value." Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930? **6 Marks**

Answer:

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

1. Sale by a Mercantile Agent:
A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely:
(a) If he was in possession of the goods or documents with the consent of the owner;
(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).
2. Sale by one of the joint owners (Section 28):
If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
3. Sale by a person in possession under voidable contract:
A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
4. Sale by one who has already sold the goods but continues in possession thereof:
If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]
5. Sale by buyer obtaining possession before the property in the goods has vested in him:
Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].

6. Effect of Estoppel:

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

7. Sale by an unpaid seller:

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

8. Sale under the provisions of other Acts:

- (I) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872].

Rtp May 2021

Ques 4: Ms. R owns a Two-Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two-Wheeler from Mr. A. Will she succeed?

(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?

(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

Ans. As per the provisions of Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- (a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the goods.

Example: He pledges or sells the goods. Referring to the above provisions, we can analyse the situation given in the question.

(i) In the instant case, Ms. K, who had taken delivery of the two-wheeler on Sale or Return basis pledged the two-wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods. Example: she pledges or sells the goods. Therefore, the property therein (Two-wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two-wheeler from Mr. A, but she can claim the price of the two-wheeler from Ms. K only.

(ii) It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for. Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two-wheeler from Mr. A.

Past Paper July 2021, Mtp2 May 2022, Mtp1 Dec 2023

Ques 5: "Risk Prima Facie passes with property". Elaborate in the context of the Sale of Goods Act, 1930.

4 Marks

Ans. Risk prima facie passes with property (Section 26 of the Sale of Goods Act, 1930) According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to

the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Mtp1 Jan 25

Ques 6: Ashish, a trader, delivered a camera to Mohan on 'sale or return' basis. Mohan delivers the camera to Raj on the terms of 'sale for cash only or return'. Afterward, Raj delivered it to Vikas on a 'sale or return' basis without paying cash to Mohan. The camera, which was in possession of Vikas, was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise whether Mohan, Raj or Vikas are, jointly or severally, liable to pay the price of the camera to Ashish. (4 Marks)

Ans: As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mohan, who had taken delivery of the camera on Sale or Return basis and delivers the same to Raj on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mohan.

Now, Raj delivered it to Vikas on a sale or return without paying cash to Mohan.

Since Raj did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Raj. Therefore, Raj is not liable to pay the price of the camera either.

Since Vikas did not accept the goods and the camera was lost by theft (despite his due care), Vikas is not liable for the price of the camera as ownership had not passed to him.

Therefore, Mohan is solely liable to pay the price of the camera to Ashish, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

Unit-4 Unpaid Seller

Mtp1 Dec 2023

Ques 1: What are the rights of unpaid seller in context to re-sale of the goods under Sale of Goods Act, 1930?

6 Marks

Ans. Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.
(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice, the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. <u>It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:</u> (a) Recover the difference between the contract price and resale price, from the original buyer, as damages. (b) Retain the profit if the resale price is higher than the contract price. It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].
(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.
(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.
(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

Study Material

Ques 2: Mr. D sold some goods to Mr. E for ₹5,00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.

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

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

(i) Suit for price (Section 55): In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
(ii) Suit for damages for non-acceptance (Section 56): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
(iii) Suit for interest [Section 61]:

If there is no specific agreement between Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Rtp May 2020

Ques 3: What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930?

Ans. If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. Damages for non-delivery [Section 57]:
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.
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:
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.

In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

Past Paper Jan 2021, Past Paper July 2021

Ques 4: What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?

4 Marks

Answer:

Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

(i) Where goods are sold in lots:
Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
(ii) Completion of the contract of sale:
The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
(iii) Right to bid may be reserved:
Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
(iv) Where the sale is not notified by the seller:
Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any

bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(v) Reserved price:

The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and

(vi) Pretended bidding:

If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Rtp Jan 25

Ques 5: 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 bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Ans: 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.

Chapter 4: The Indian Partnership Act, 1932

Unit-1 General Nature of Partnership

Past Paper Nov 2020, Rtp May 2020, Past Paper Jan 2021, Mtp1 Nov 2022

Ques 1: Explain the following kinds of partnership under the Indian Partnership Act, 1932:

(i) Partnership at will

(ii) Particular partnership.

4 Marks

Ans. **Partnership at will:** According to **Section 7** of the Indian Partnership Act, 1932, 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.

(ii) **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.

Past Paper Jan 2021

Ques 2: Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities? 2 Marks

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

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

Past Paper Jan 2021

Ques 3: "Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932. 4 Marks

Ans. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners.

An act of one partner in the course of the business of the firm is in fact an act of all partners.

Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

It may be noted that the true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that:

(1) there should be an agreement to share the profits as well as the losses of business; and (2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are

not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

Past Paper Dec 2021, Rtp Dec 2023

Ques 4: State whether the following are partnerships:

- (i) A and B jointly own a car which they used personally on Sundays and holidays and let it on hire as taxi on other days and equally divide the earnings.
- (ii) Two firms each having 12 partners combine by an agreement into one firm.
- (iii) A and B, co-owners, agree to conduct the business in common for profit.
- (iv) Some individuals form an association to which each individual contributes ₹500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- (v) A and B, co-owners share between themselves the rent derived from a piece of land.
- (vi) A and B buy commodity X and agree to sell the commodity with sharing the profits equally. **6 Marks**

Answer:

(i) **No**, this is not a case of partnership because the sharing of profits or of gross returns accruing from property holding joint or common interest in the property would not by itself make such person's partners.

Alternatively, this part can also be answered as below:

Yes, this is a case of partnership, as the car is used personally only on Sundays and holidays and used for most of the days as a Taxi. Hence, it is inferred that the main purpose of owning the car is to let it for business purpose. Also, there is an agreement for equally dividing the earnings.

(ii) **Yes**, this is a case of partnership because there is an agreement between two firms to combine into one firm.

(iii) **Yes**, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.

(iv) **No**, this is not a case of partnership as no charitable association can be floated in partnership.

(v) **No**, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.

(vi) **Yes**, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Past Paper May 2022, Mtp2 Dec 2023, Rtp Dec 2023

Ques 5: (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

2 Marks

(ii) Can a minor become a partner in a partnership firm? Justify your answer and also explain the rights of a minor in a partnership firm.

4 Marks

Ans. (i) **Partnership for a fixed period (Indian Partnership Act, 1932):** Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

(ii) **Minor as a partner:** A minor is not competent to contract. Hence, a person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights of a minor in a partnership firm:

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

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

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

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

Mtp Jan 2025, Rtp Jan 2025

Ques 6: Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

Ram and Shyam are partners in a partnership firm named as RS & Co. (the firm). Gaurav, a renowned businessman, is their common friend. Ram introduced Gaurav to Sahil, a supplier to the firm, as his newly joined partner. Gaurav knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gaurav, being a partner of the firm, was shared by Sahil with another businessman Madhav. Next day, Sahil supplied the raw material on credit and Madhav lent ₹ 5 lakhs to the firm for a short period on the understanding that Gaurav is a partner of the firm. On due dates, the firm failed to discharge its liability towards both.

Advise Gaurav, whether he is liable to Sahil and Madhav for the aforesaid liability of the firm. 4 Marks

(ii) On admission as a new partner, Ashwin agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by all partners including Ashwin. Examine whether Ashwin will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm. 3 Marks

Ans. (i) Partner by holding out (Section 28 of the Indian Partnership Act, 1932):

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gaurav allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gaurav is held liable to Sahil as he represented himself by his act to be a partner to the RS & Co.

However, Gaurav is not liable to Madhav for the liabilities incurred by the firm. Information of Gaurav being a partner to the firm was shared by the Sahil (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

Hence Gaurav is liable to Sahil and not to Madhav for the liability of the Firm.

(ii) Rights and liabilities of new partner: The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

But a mere agreement amongst partners cannot operate as Novation.

Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, Ashwin will not be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm.

Unit-2 Relations of Partners

Study Material, Rtp Nov 2018, Mtp May 2018, Mtp2 May 2019, Rtp June 2023, Mtp 2 Jan 25

Ques 1: 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? 6 Marks

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

The rights of such a transferee are as follows:

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

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

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

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

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

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

Study Material, Rtp May 2018, Mtp2 Nov 2018, Mtp2 May 2021, Rtp Nov 2021, Mtp1 June 2023

Ques 2: Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. 6 Marks

Ans. A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under **Section 30** of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under **Section 30** as follows:

Rights:

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Study Material, Past Paper May 2019, Mtp Nov 2020, Mtp1 June 2023

Ques 3: M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was

blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

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

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

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

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

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

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

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

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

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

- (a) the power of expulsion must have existed in a contract between the partners;
- (b) the power has been exercised by a majority of the partners; and
- (c) it has been exercised in good faith.

Study Material, Rtp May 2018, Rtp May 2020

Ques 4: A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

Ans. Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

(1) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

(2) Interest at the rate of 6 per cent annum on the amount of his share in the property. Based on the aforesaid provisions of **Section 37** of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:

- (a) the 20% shares of profits (as per the partnership deed); or
- (b) interest at the rate of 6 per cent per annum on the amount of A's share in the property

Past Paper Nov 2018

Ques 5: Mr. A, Mr. B and Mr. C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading of branded furniture. The name of the partners was clearly written along with the firm name in front of the head office of the firm as well as on letter-head of the firm. On 1st October, 2018, Mr. C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letter-heads of the firm. As per the terms of partnership, the firm continued its operations with Mr. A and Mr. B as partners.

The accounts of the firm were settled and the amount due to the legal heirs of Mr. C was also determined on 10th October, 2018. But the same was not paid to the legal heirs of Mr. C. On 16th October, 2018, Mr. X, a supplier supplied furniture worth ₹20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount due to heavy losses.

Mr. X wants to recover the amount not only from M/s ABC & Co., but also from the legal heirs of Mr. C. Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr. C can also be held liable for the dues towards Mr. X. **3 Marks**

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

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable.

Mtp1 Nov 2018, Rtp May 2019, Past Paper July 2021

Ques 6: What do you mean by "implied authority" of the partners in a firm? Point out the extent of partner's implied authority in case of emergency, referring to the provisions of the Indian Partnership Act, 1932. **6 Marks**

Ans. Implied Authority of Partner as Agent of the Firm (Section 19): Subject to the provisions of **section 22**, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

- (1) The authority of a partner to bind the firm conferred by this section is called his "implied authority".
 (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
- Submit a dispute relating to the business of the firm to arbitration;
 - open a banking account on behalf of the firm in his own name;
 - compromise or relinquish any claim or portion of a claim by the firm;
 - withdraw a suit or proceedings filed on behalf of the firm;
 - admit any liability in a suit or proceedings against the firm;
 - acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; and
 - enter into partnership on behalf of the firm.

Mode Of Doing Act to Bind Firm (Section 22): In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Past Paper Nov 2020, Rtp May 2021

Ques 7: Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. **4 Marks**

Ans. Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932): Where-

- a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of section 27:

It may be observed that the workings of the two clauses of **Section 27** are designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of **clause (b)** would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners. The firm would be liable in both the cases.

Past Paper Jan 2021

Ques 8: Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932. **4 Marks**

Ans. Liability of a partner for acts of the firm (Section 25 of the Indian Partnership Act, 1932): Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.

The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. Again, in order to bring a case under **Section 25**, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

Liability of the firm for wrongful acts of a partner and for misapplication by partners (Sections 26 & 27 of the Indian Partnership Act, 1932): Where, - by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

A partner acting within his apparent authority receives money or property from a third party and misapplies it, or a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Past Paper July 2021, Mtp1 May 2022, Mtp2 Nov 2022, Mtp2 June 2023

Ques 9: Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr. Z for settling the amount.

In the light of the provisions of the Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? **6 Marks**

Ans. According to **Section 29** of the Indian Partnership Act, 1932,

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law:

(i) Yes, Mr. M can validly transfer his interest in the firm by way of sale.

(ii) On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) will be entitled, against the remaining partners:

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

(b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of ₹6 crore in the firm's assets.

Mtp1 Nov 2021, Mtp2 May 2022

Ques 10: Enumerate the differences between Partnership and Joint Stock Company.

6 Marks

Answer:

Basis	Partnership	Joint Stock Company
Legal status	A firm is not legal entity i.e., it has no legal personality distinct from the personalities of its constituent members	A company is a separate legal entity distinct from its members (Salomon v. Salomon).
Agency	In a firm, every partner is an agent of the other partners as well as of the firm.	In a company, a member is not an agent of the other members or of the company, his actions do not bind either.
Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
Extent of liability	In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.
Property	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
Transfer of shares	A share in a partnership cannot be transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.
No. of Membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.

Duration of Existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoys a perpetual succession.
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Rtp Jan 25

Ques 11: With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner **2 Marks**

Ans. Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932): The insolvent partner cannot be continued as a partner. He will be ceased to be a partner from the very date on which the order of adjudication is made. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

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

Mtp, Jan 2025

Ques 12: Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i)"If a partner is otherwise expelled; the expulsion is null and void." Discuss. **4 Marks**

(ii)"The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse. **2 Marks**

Ans. (i) If a partner is otherwise expelled, the expulsion is null and void.

According to Section 33 of the Indian Partnership Act, 1932

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

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

(iii) it has been exercised in good faith.

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

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

(i) The expulsion must be in the interest of the partnership.

(ii) The partner to be expelled is served with a notice.

(iii) He is given an opportunity of being heard.

Hence, it is correct to say that, if a partner is otherwise expelled, the expulsion is null and void.

(ii)"The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion"

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion, until public notice is given of the expulsion. However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

Mtp 2 Jan 25

Ques 13: A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C.

However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceed from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C. **3 Marks**

Ans. 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.

Rtp Jan 2025

Ques 14: P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business? **4 Marks**

Ans. 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.

Rtp, Jan 25

Ques 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?

Ans. (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 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.

Unit-3 Registration and Dissolution of a Firm

Study Material, Rtp Nov 2019, Mtp1 May 2019, Mtp Nov 2020, Mtp2 May 2021, Mtp1 Nov 2021, Mtp2 May 2022, Mtp1 June 2023

Ques 1: When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. **4 Marks**

Ans. 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 incapacitated 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 adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) 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.
- (e) 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
- (f) 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) wilful or persistent breach 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.

Study Material, Past Paper May 2019, Mtp May 2020, Mtp1 May 2021, Rtp May 2021, Mtp2 Nov 2021, Past Paper Nov 2022, Mtp1 Dec2023, PYQ June 24, Mtp Jan 25,

Ques 2: "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 nonregistration of the partnership firms In India? **6 Marks**

Answer:

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

Following are 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 another 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.

Rtp Nov 2018, Past Paper Nov 2018, Rtp May 2020, Past Paper May 2022

Ques 3: State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same.

4 Marks

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

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

(1) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.

(2) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(3) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.

(4) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners.

Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

(5) **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.

(6) **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(7) **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm.

The following are the cases for the just and equitable grounds-

- (i) Deadlock in the management.
- (ii) Where the partners are not in talking terms between them.
- (iii) Loss of substratum.
- (iv) Gambling by a partner on a stock exchange.

Past Paper May 2018, Past Paper Nov 2019**Ques 4: Distinguish between dissolution of firm and dissolution of partnership. 2 Marks****Ans. Dissolution of Firm Vs. Dissolution of Partnership**

Basis of Difference	Dissolution of Firm	Dissolution of Partnership
Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Past Paper Nov 2020**Ques 5: What are the rights which won't be affected by Non-Registration of Partnership firm? 4 Marks****Ans. non-registration of a firm does not, however, affect the following rights:**

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignee, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹100 in value.

Mtp1 Nov 2018, Past Paper July 2021, Mtp1 May 2022, Mtp2 May 2022, Mtp2 Nov 2022, Mtp2 June 2023**Ques 6: Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. 4 Marks****Ans. Mode of Settlement of partnership accounts:**As per **Section 48** of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: -

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Mtp 2, Jan 25**Ques 7: P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business?****If so, what options are available to Q and R who are reluctant to continue operating the business? 4 Marks**

Ans. 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**.

Mtp 2, Jan 25

Ques 8: State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932. **7 Marks**

Ans. DISSOLUTION BY THE COURT (SECTION 44 of the Indian Partnership Act, 1932):

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

(a) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner.

Temporary sickness is no ground for dissolution of firm.

(b)Permanent incapacity: When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

(c)Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.

(d)Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners.

Following comes in to category of breach of contract:

> Embezzlement, Keeping erroneous accounts

> Holding more cash than allowed

> Refusal to show accounts despite repeated request etc.

(e)Transfer of interest: Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.

(f)Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(g)Just and equitable grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

(i)Deadlock in the management.

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

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange

Chapter 5: The Limited Liability Partnership Act, 2008

Study Material, Mtp Nov 2019, Rtp Nov 2020, Rtp May 2021, Mtp2 Nov 2021, Mtp2 May 2022

Ques 1: What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in an LLP? 5 Marks

Ans. Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

(i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

(ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

(iii) Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.

Study Material, Past Paper May 2019, Mtp Nov 2020, Past Paper July 2021, Mtp1 Nov 2021, Mtp1 May 2022, Rtp May 2022, Mtp2 Nov 2022, Mtp1 June 2023

Ques 2: "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. 5 Marks

Ans. LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

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

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

Study Material, Past Paper May 2018, Rtp Nov 2018, Past Paper Nov 2018

Ques 3: Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. 5 Marks

Ans. Essential elements to incorporate Limited Liability Partnership (LLP) -

Under the LLP Act, 2008, the following elements are very essential to form an LLP in India:

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

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

(iii) To have registered office in India to which all communications will be made and received; (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.

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

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

(vii) LLP Name.

Steps to incorporate LLP:

1. Name reservation:

- (i) The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
 (ii) Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of an LLP business.

2. Incorporate LLP:

- (i) After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
 (ii) e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

3. LLP Agreement:

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

Rtp Nov 2018, Rtp Nov 2021

Ques 4: Differentiate between an LLP and a partnership firm?

Ans.

Basis	LLP	Partnership firm
Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body Corporate.
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
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.
Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
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.
Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
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.
Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
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.
Annual filing of Documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
Foreign partnership	Foreign nationals can become a partner in an LLP.	Foreign nationals cannot become a partner in a partnership firm.

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.
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Rtp May 2019

Ques 5: What is the meaning of the Limited Liability Partnership? State the various characteristics of it?

Ans. Meaning of Limited Liability Partnership (LLP): An LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Characteristic/Salient Features of LLP

LLP is a body corporate:
Section 2(1)(d) of the LLP Act, 2008 provides that an 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 provides that an LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
Perpetual Succession:
The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
Separate Legal Entity:
The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.
Mutual Agency:
Further, 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.
LLP Agreement:
Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
Artificial Legal Person:
An 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. An LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
Common Seal:
An 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 an 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.
Limited Liability:

Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.

Management of Business:

The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

Minimum and Maximum number of Partners:

Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.

Business for Profit Only:

The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

Investigation:

The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.

Compromise or Arrangement:

Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

Conversion into LLP:

A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

Rtp Nov 2019

Ques 6: Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

Ans. Partners (Section 5 of Limited Liability Partnership Act, 2008): Any individual or body corporate may be a partner in an 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;
- (a) he is an undischarged insolvent; or
- (b) he has applied to be adjudicated as an insolvent and his application is pending.

Rtp May 2020

Ques 7: What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Ans. Change of name of LLP (Section 17 of LLP Act, 2008):

1. Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new name, is registered by a name which is identical with or too nearly resembles to—
 - (a) that of any other limited liability partnership 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 limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

2. Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen 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 thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

3. If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter:

Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of **section 16**.

Past Paper Dec 2021

Ques 8: State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. 5 Marks

Ans. 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 an 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) An 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 any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

Mtp1 Nov 2018, Rtp May 2018, Mtp1 May 2019, Mtp2 May 2021, Past Paper Nov 2022, Mtp1 Dec 2023

Ques 9: Differentiate between a Limited Liability Partnership and Limited Liability Company. 5 Marks

Ans. Distinction between Limited Liability Partnership (LLP) and Limited Liability Company

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013
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.
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).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members 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.

Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. - 2 directors public co. - 3 directors

Mtp1 Nov 2022, Rtp June 2023

Ques 10: What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?

5 Marks

Ans. "Small Limited Liability Partnership [Section 2(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.

Mtp1 Jan 2025

Ques 11: Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein.

4 Marks

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

2 Marks

Ans. (i) Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008):

(1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to -

- (a) that of any other LLP or a company; or
- (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where an 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 an 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 lakhs 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

(ii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Mtp2 Jan 2025, Rtp Jan 25

Ques 12: 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.

6 Marks

- (i) Body Corporate
- (ii) Mutual Agency
- (iii) Foreign LLPs
- (iv) Artificial legal person

Ans.

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. An LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

Chapter 6: The Companies Act, 2013

Study Material, Mtp May 2018, Mtp2 May 2019

Ques 1: What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.

Ans. Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Study Material, Rtp May 2018, Rtp May 2019, Mtp1 Nov 2022

Ques 2: Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Ans. 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.

Study Material, Rtp Nov 2018, Mtp2 Nov 2018, Rtp May 2020, Mtp2 Nov 2021, Mtp1 May 2022, Past Paper May 2022

Ques 3: Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?

Ans. Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further information on. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this

account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

Example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company, then the lender steps into the shoes of the debtor paid off and consequently, he would be entitled to recover his loan to that extent from the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently.

For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

Study Material, Rtp Nov 2019, Mtp May 2020, Rtp Nov 2020, Past Paper Jan 2021, Mtp1 May 2021

Ques 4: Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.

Ans. Doctrine of Indoor Management (the Companies Act, 2013): According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above-mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

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

In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in Morris v Kansseen, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

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

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property. Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff was put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

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

Forgery may in circumstances exclude the 'Turquand Rule'. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.

The plaintiff contended that whether the signature was genuine or forged was a part of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

Study Material, Mtp May 2018, Rtp May 2019, Past Paper Nov 2019, Mtp2 May 2021

Ques 5: A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed?

Ans. Provision: The House of Lords in Salomon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

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

Fact of the case: In the instant case, the four private limited companies were formed by A, the assessee, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

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

Past Paper May 2018

Ques 6: State the limitations of the doctrine of indoor management under the Companies Act, 2013.

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

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

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

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

Past Paper Nov 2018

Ques 7: There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate.

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

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

Lifting of Corporate Veil

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- **Where the device of incorporation is adopted for some illegal or improper purpose:** Where the device of incorporation is adopted for some illegal or improper purpose, **Example:** to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Past Paper May 2019, Mtp2 May 2022

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

Ans. In the present case, the total share capital of Popular Products Ltd. is ₹20 crores comprised of 12 Lakh equity shares and 8 Lakhs preference shares. Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd. which amounts to less than one-half of its total share capital. Hence, Jovial Ltd. by virtue of shareholding is not a holding company of Popular Products Ltd. Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company. [Section 2(87) of the Companies Act, 2013].

Past Paper Nov 2020, Rtp May 2021, Mtp2 Nov 2021

Ques 9: ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 Crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-Convertible Debentures stands at

₹120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

Ans. As per **Section 2(6)** of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the -

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹15 crore, which is less than requisite control of 20% of total share capital (i.e., 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

Past Paper Nov 2020

Ques 10: Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis., on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?

Ans. Foreign Company [Section 2(42) of the Companies Act, 2013]:

It means any company or body corporate incorporated outside India which—

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

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

Past Paper July 2021, Rtp June 2023

Ques 11: Explain the classification of the companies on the basis of control as per the Companies Act, 2013.

Ans. In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:

(a) Holding and subsidiary companies: 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)] For the purposes of this clause, the expression "company" includes anybody corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(III) the expression "company" includes anybody corporate;

(IV) "layer" in relation to a holding company means its subsidiary or subsidiaries.

(b) Associate company [Section 2(6)]: In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

The term "Total Share Capital", means the aggregate of the -

(1) Paid-up equity share capital; and

(2) Convertible preference share capital.

Past Paper Dec 2021, Mtp1 Nov 2021, Mtp2 Nov 2022, Rtp Dec 2023, Rtp Jan 25

Ques 12: 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?

Ans. Provision: Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) "layer" in relation to a holding company means its subsidiary or subsidiaries.

Fact of the case: 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.

Conclusion: Hence, PQ Private Limited is subsidiary of BC Private Limited

Mtp1 Nov 2018

Ques 13: FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.

Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013.

Ans. As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal

may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.

Hence, the order of NCLT will be legal.

Precautions: Before making any order, —

(a) the company shall be given a reasonable opportunity of being heard in the matter; and

(b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Mtp2 Nov 2021, Rtp May 2022

Ques 14: Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After some time, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

(I) Whether Jagannath Oils Limited is required to reduce the number of members.

(II) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017?

Ans. According to **Section 2(68)** of 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.

(I) Following the provisions of **Section 2(68)**, 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e., after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.

(II) On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

Rtp May 2021

Ques 15: SK Infrastructure 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 Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.

Ans. Provision: 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.

Fact of the case: In the instant case, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of ₹100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Conclusion: Hence, SK Infrastructure Limited is a government company.

Past Paper Nov 2022

Ques 16: Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.

Ans. Listed company: As per the definition given in the **section 2(52)** of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies. Whereas the word securities as per the **section 2(81)** of the Companies Act, 2013 has been assigned the same meaning as defined in **clause (h) of section 2** of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

Rtp Jan 2025

Ques 17: 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?

Ans. 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.

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.

Rtp Jan 2025

Ques 18: 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% |

Ans. 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.

Mtp1 Jan 2025

Ques 19: A company, DEF limited as on 31.03.2024 had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2024, DEF limited 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 MNO private limited company. MNO is a holding company of JKL private limited by having control over the composition of its board of directors. Now, JKL private limited claims the status of being a subsidiary of DEF limited as being a subsidiary of its subsidiary i.e. MNO private limited. Examine the validity of the claim of JKL private limited. State the relationship if any, between DEF limited & MNO Private Limited as per the provisions of the Companies Act, 2013.

7 Marks

Ans. 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 31.03.2024, DEF Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2024, DEF Limited issued an additional 10,000 equity shares, which was fully subscribed. Post-issue, the total paid-up capital of DEF Limited is ₹ 2 lakhs (20,000 equity shares of ₹10 each).

Of these, 5,000 shares were issued to MNO Private Limited. Since MNO Private Limited holds only 25% of the shares in DEF Limited, it does not have control of more than one-half of the total voting power of DEF Limited. Hence, MNO Private Limited cannot be considered as a subsidiary company of DEF Limited in terms of the second criteria stated above, that of controlling of voting power.

MNO Private Limited is the holding company of JKL Private Limited, having control over the composition of its Board of Directors. But since MNO Private Limited cannot be termed as a subsidiary company of DEF Limited, JKL Private Limited cannot claim the status of being a subsidiary of DEF Limited in terms of the first criteria, that of controlling 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 DEF Limited and MNO Private Limited can be of an Associate Company. Since MNO Private Limited holds more than 20 percent of voting power in DEF Limited, it can be considered as an Associate Company of DEF Limited.

Chapter 7: The Negotiable Instruments Act, 1881

Study Material

Ques 1: M drew a cheque amounting to ₹2 lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?

Ans. No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

Study Material

Ques 2: Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?

Ans. As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Mtp1 June 2024

Ques 3: What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881.

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

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Mtp2 June 2024, Mtp2 Jan 25

Ques 4: What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881?

Ans. Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing

any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

Mtp2 June 2024

Ques 5: 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?

Ans. 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.

Mtp3 June 2024

Ques 6: Explain the Rules as to compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee covered under the Negotiable Instruments Act, 1881.

Ans. As per 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:

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

(ii) 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;

(iii) 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;

(iv) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;

(v) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be

accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Rtp Jan 25, Mtp1 Jan 25

Ques 7: 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-

Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?

What would be your answer if Y issued a cheque as a donation to Mr. Z?

Ans: Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

Where any cheque drawn by a person on an account maintained by him with a banker-

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the-
 - ➔ amount of money standing to the credit of that account is insufficient to honour the cheque, or
 - ➔ that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

In the instant case,

1. 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.
2. 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.