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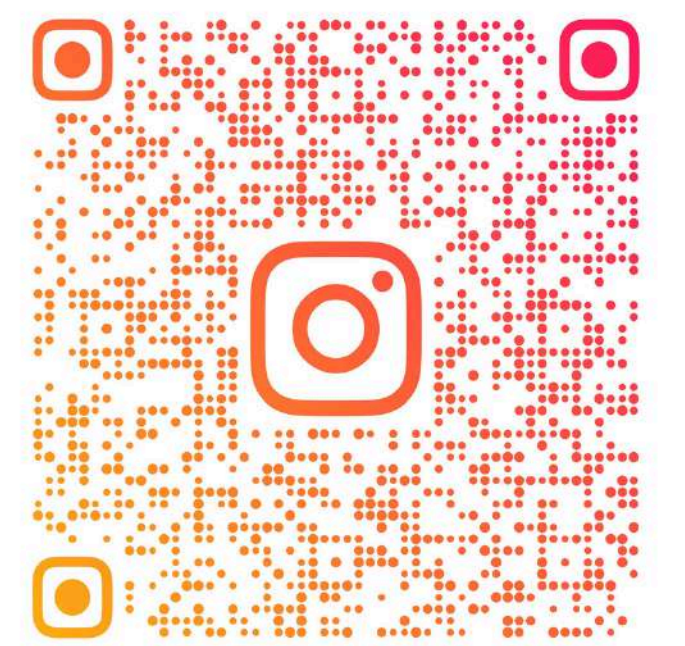


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- Elected as Convenor of The Jalna CA CPE Chapter of WIRC of ICAI For 2 consecutive years 20-21 & 21-22.
- He Has Successfully Completed & Qualified Following Certificate Course Conducted By ICAI
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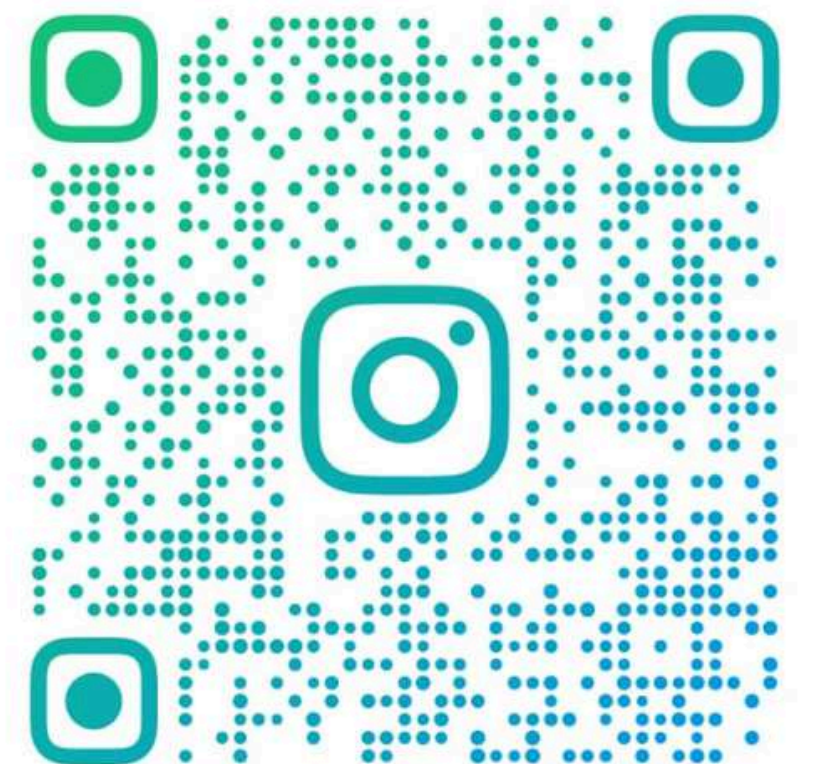


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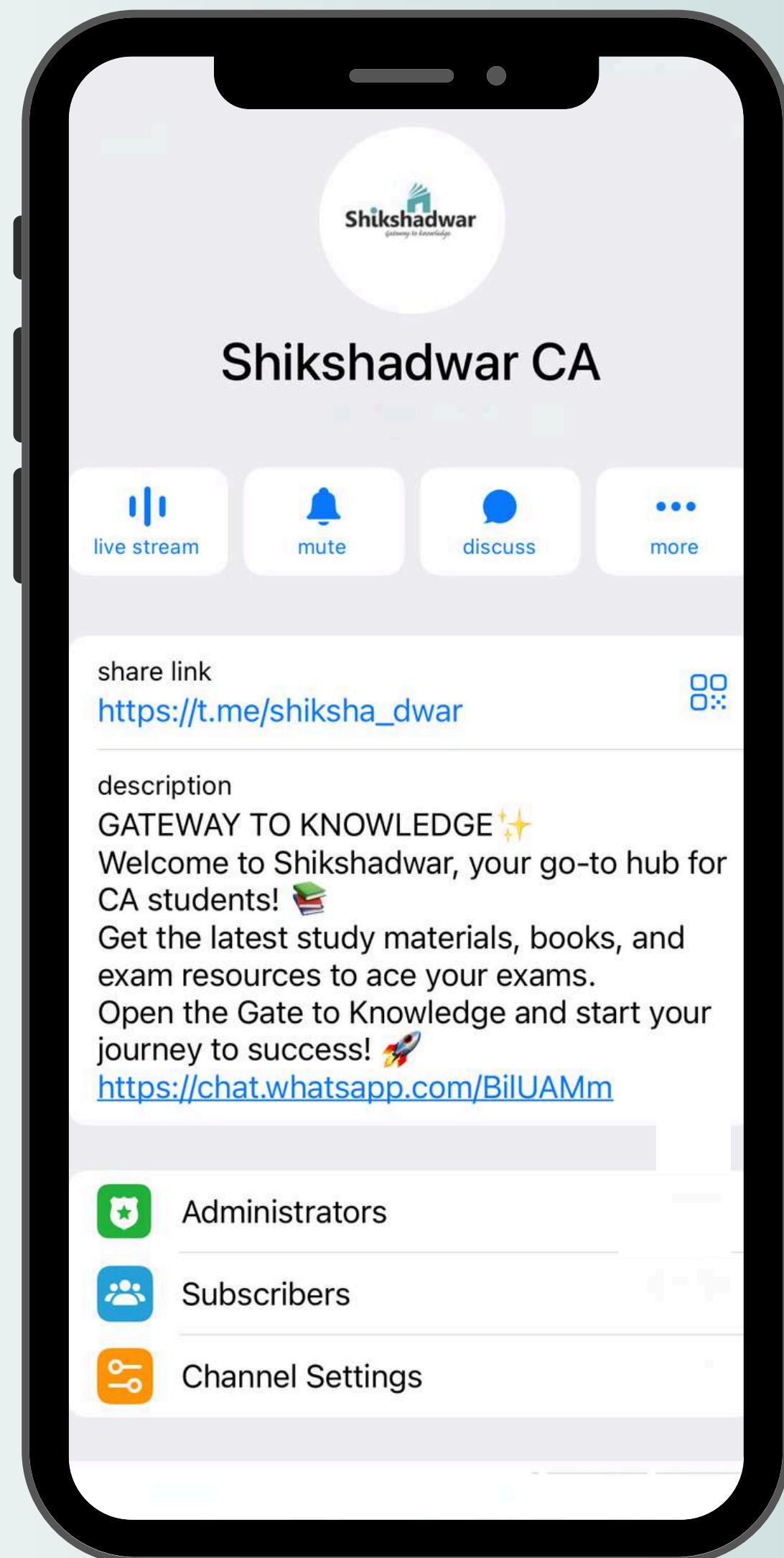
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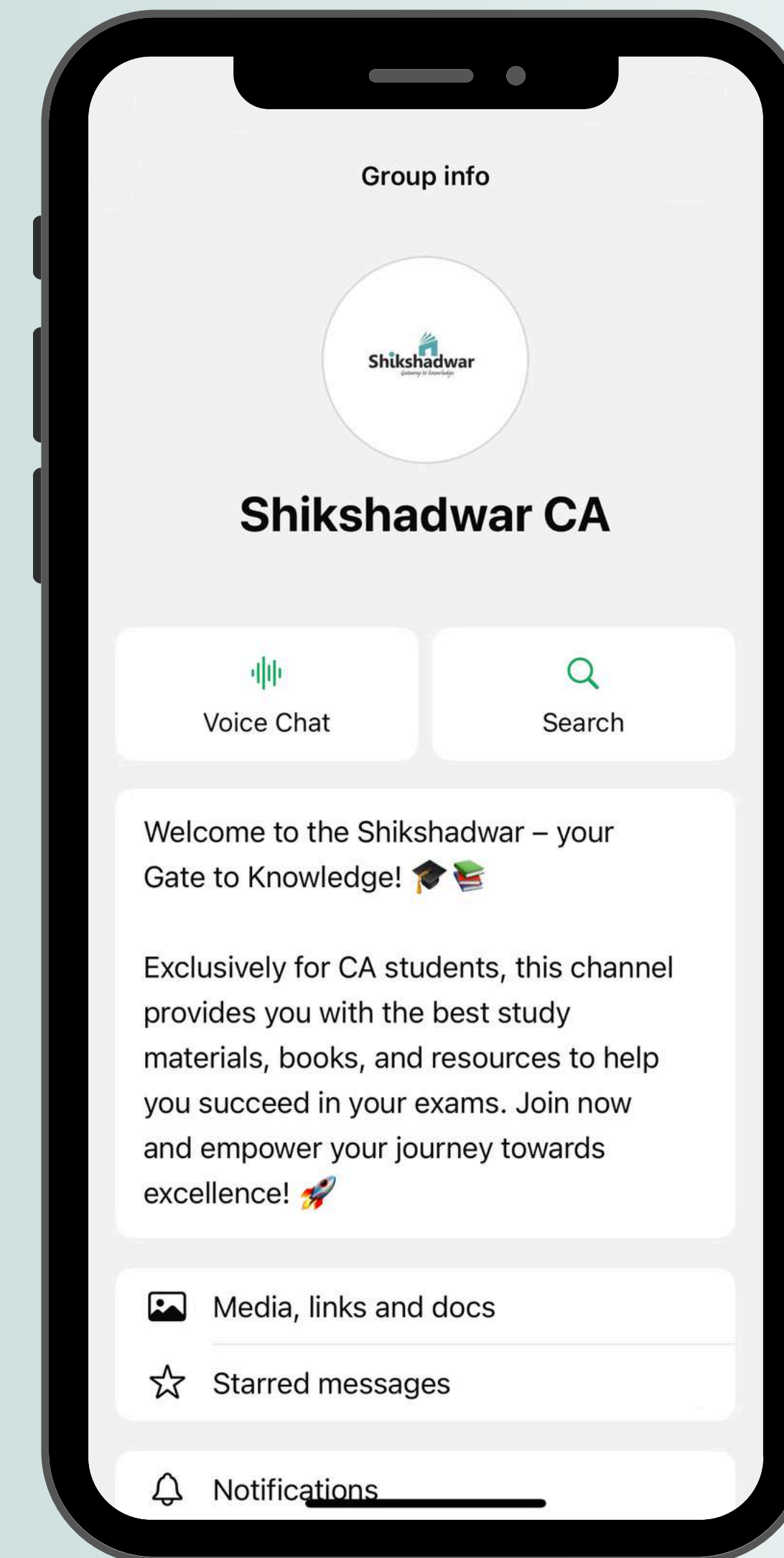
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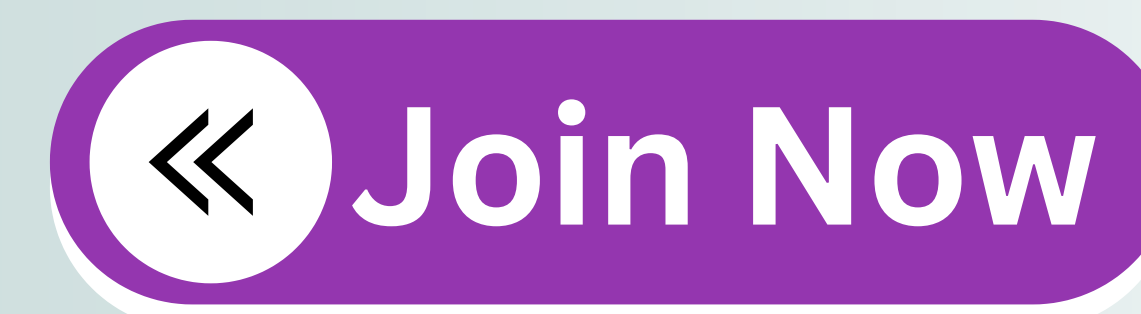
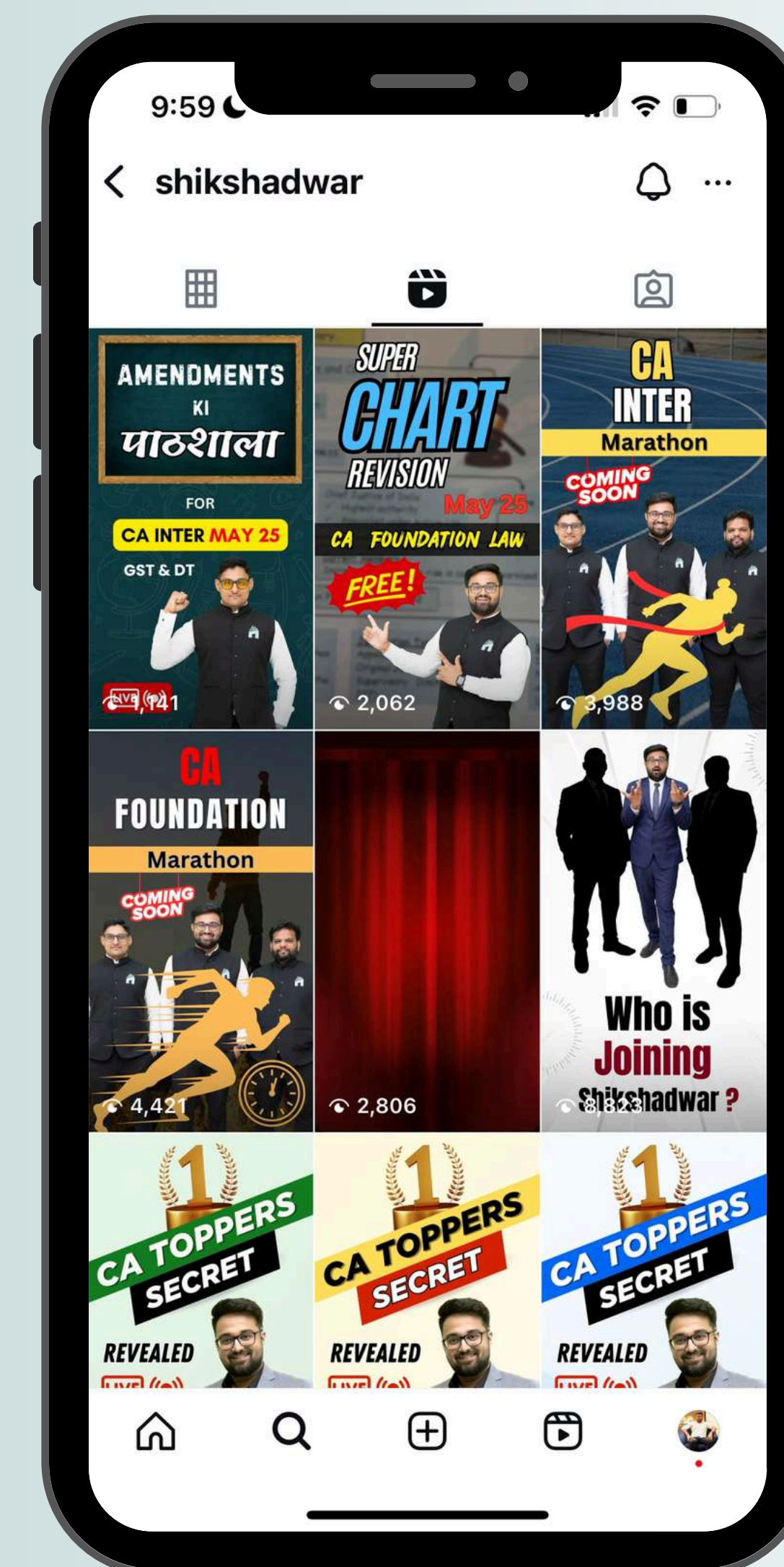
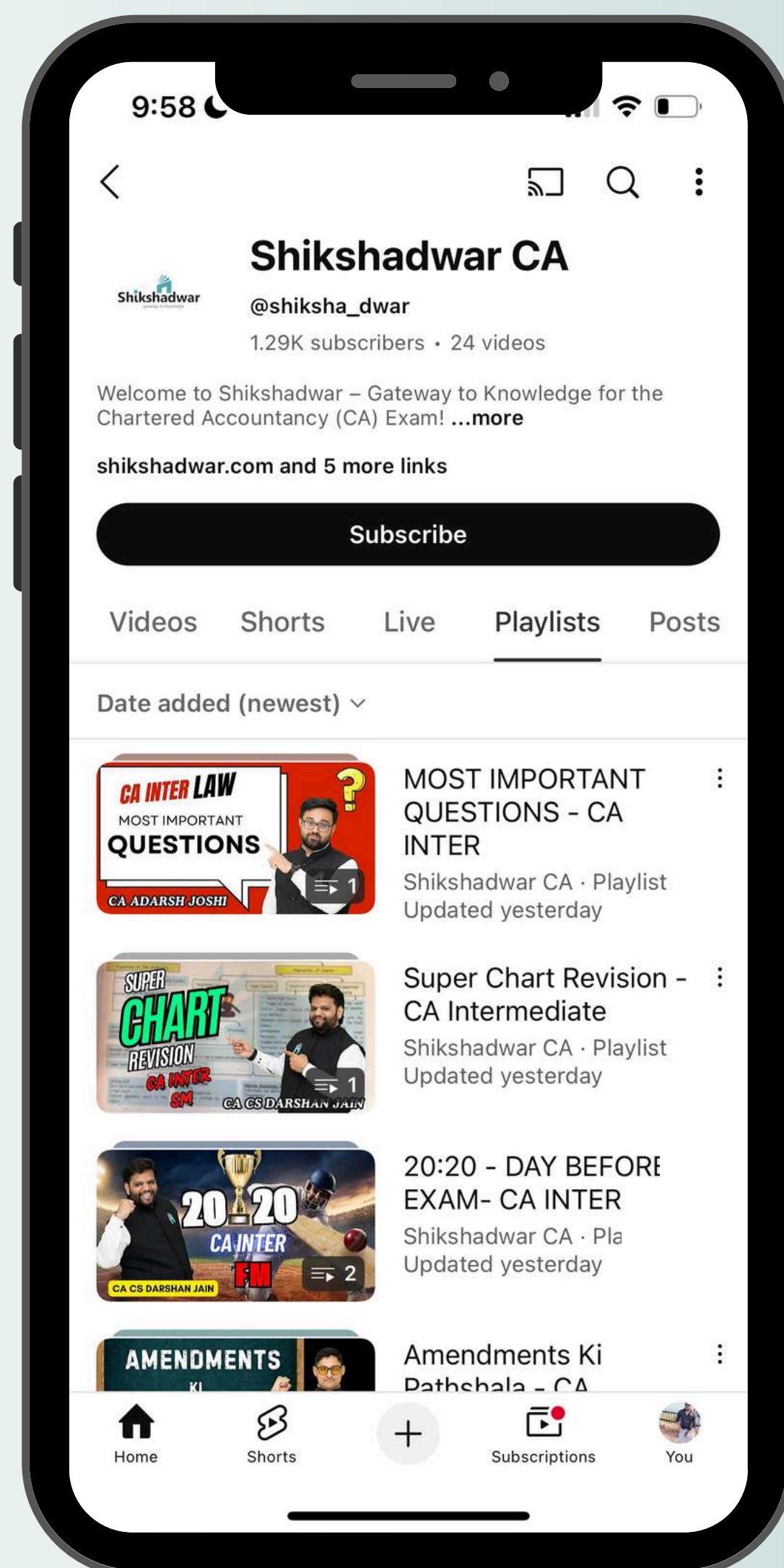


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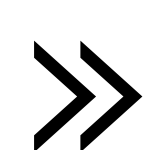
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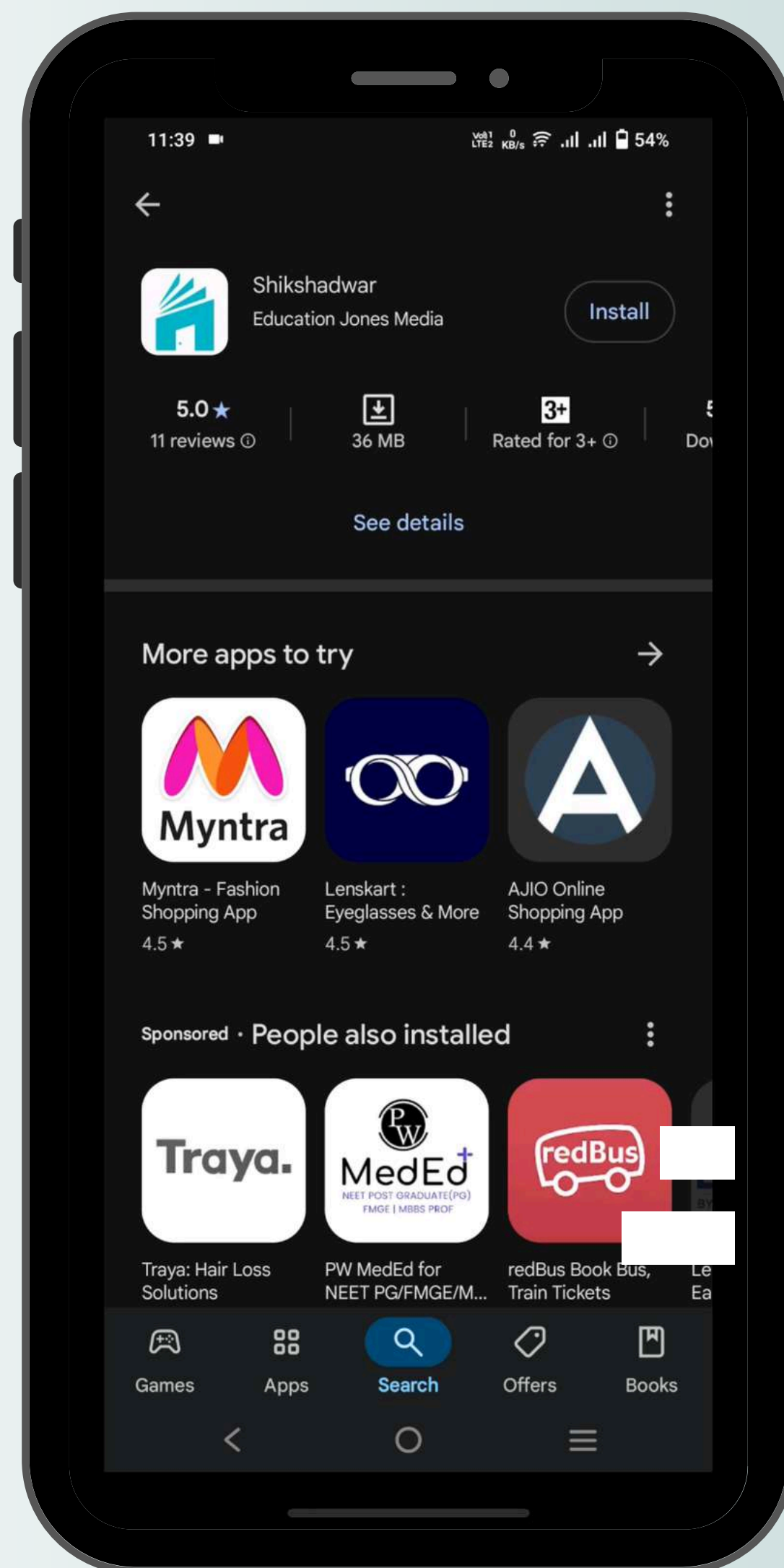
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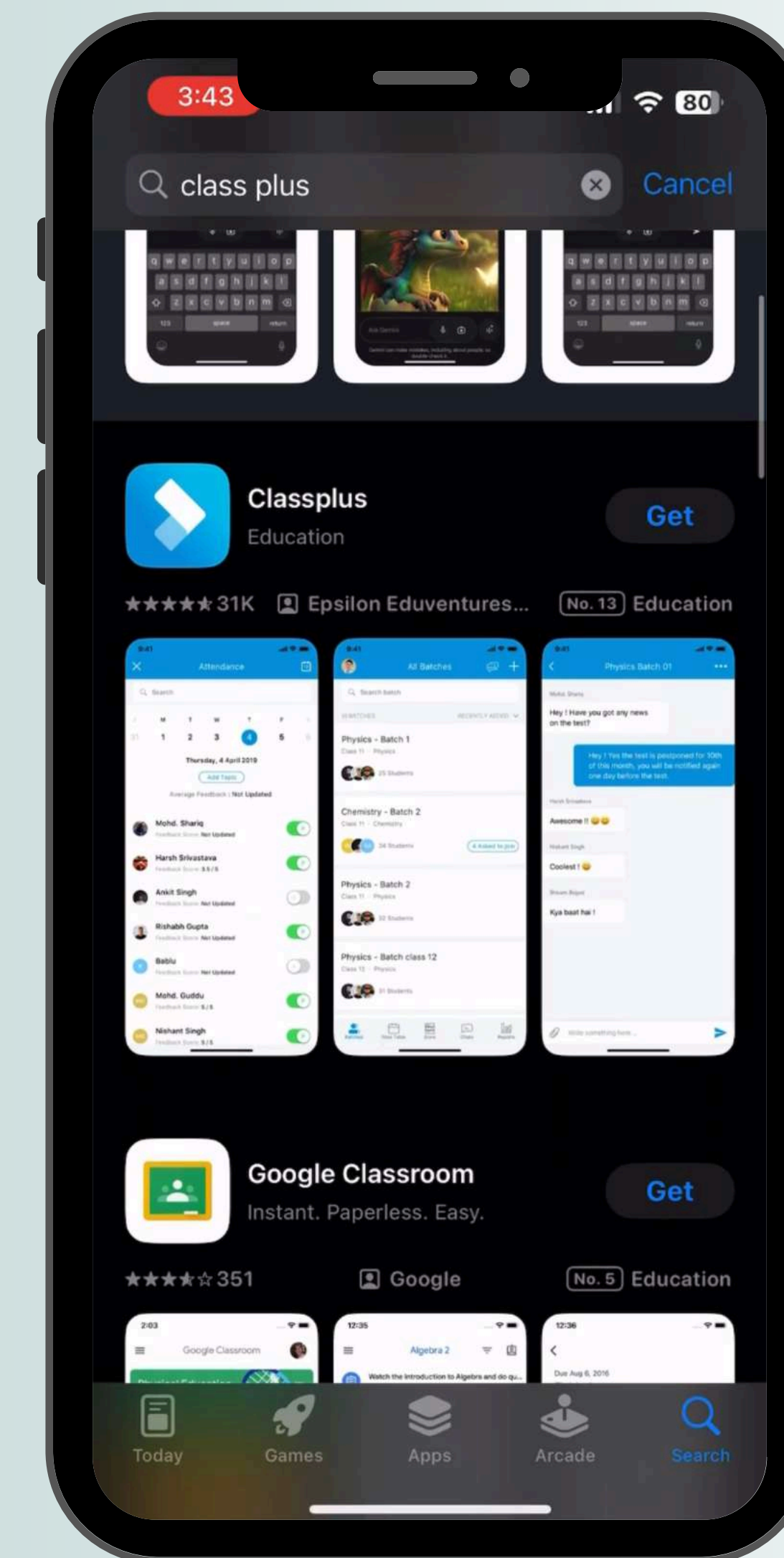
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Chapter 1: Indian Regulatory Framework

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: 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 May 2025

Que. 3 Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework.

Ans.
The laws in the Indian legal system could be broadly classified as follows:

Criminal Law

Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (CrPC). The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes. Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Civil Law

Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort. Some examples of civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.

Common Law

A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

Principles of Natural Justice

Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law. Nemo judex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally meaning "hear the other party or give the other

party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

Rtp Jan 2025/ PYQ Jan 2025

Que. 4 Ashok and Vimal are pursuing chartered accountancy course and discussing about the structure of the Indian judicial system. Explain them the functions of judiciary system of India and the hierarchy of courts and briefly explain their functioning under the Indian Regulatory Framework.

Ans: The functions of judiciary system of India are:

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

In the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution.

In fact, a Supreme Court decision is the final word on the matter.

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

(ii) High Court: The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellate, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

(iii) District Court: Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters. Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore. Jurisdiction means the power to control. Courts get territorial Jurisdiction based on the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

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

MTP2 May 2025

Que. 5 (i) Describe the major functions and specialised divisions of the Reserve Bank of India (RBI). How does it contribute to India's economic development?

(ii) Explain the key responsibilities and organizational structure of the Ministry of Corporate Affairs (MCA). Highlight the legislative acts it administers and the role of the ICLS cadre.

Ans: (i) Reserve Bank of India-

- a. It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- b. It is under the ownership of Ministry of Finance, Government of India.
- c. It is responsible for the control, issue and maintaining supply of the Indian rupee.
- d. It also manages the country's main payment systems and works to promote its economic development.
- e. Bhartiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewa's (Central India).

- f. RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- g. Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised divisions for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(ii) Ministry of Corporate Affairs (MCA)

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

MTP1 May 2025

Que. 6 What do you understand by Law? Also explain, how is Law enforced in a legal system?

Ans: Law: Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

Enforcement of Law:

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

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.

Ans.

(i) The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court (Section 28 of the Indian 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 with in that time, the contract is voidable at the option of the promisee. If promisee has received any benefit, he must return to promisor.

In the 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.

MTP2 May 2025/ PYQ Jan 2025

Ques 3: Examine the validity of the following agreements under the provisions of the Indian Contract Act, 1872 and justify your answer:

- (i) Mrs. Deepika pays a sum of ₹20,000 to a marriage bureau to provide information about the prospective grooms for her daughter's marriage.
- (ii) Bharat agrees with Rahul to sell his white horse. Unknown to both the parties, the horse was dead at the time of agreement.
- (iii) Ayush sells the goodwill of his shop to Omkar for ₹5,00,000 and promises not to carry on such similar business within the local limits so long as Omkar carries on like business.
- (iv) A property worth ₹20,00,000 was agreed to be sold for just ₹2,50,000 by a person of unsound mind.

(7 Marks)

Ans:

(i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.

In the instant case, the agreement to pay ₹20,000 in exchange for a service (providing information about prospective grooms) is lawful. Hence, the agreement is valid.

(ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake.

In such a case, the agreement is void. In the instant case, the horse's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract. Hence, the agreement is void.

(iii) Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, the restriction is limited to the local area and does not extend indefinitely. Hence, the agreement is valid.

(iv) According to Section 12, a contract by a person who is not of sound mind is void.

In the instant case, a property worth ₹20,00,000 was agreed to be sold for just ₹2,50,000 by a person of unsound mind. Hence, the agreement is void.

MTP1 May 2025, RTP May 2025

Ques 4: "What is meant by a void contract and a voidable contract? Explain the differences between the two."

Ans:

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

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

The differences between void contract and voidable contract are as follows:

Basis	Void Contract	Voidable Contract
Meaning	A contract which ceases to be enforceable by law becomes void.	An agreement enforceable by law at the option of one or more parties, but not at the option of others.
Enforceability	Cannot be enforced by law.	Enforceable only at the option of the aggrieved party.
Cause	Becomes void due to a change in law or circumstances beyond the parties' control.	Becomes voidable when consent is not free (e.g., obtained by coercion, fraud, misrepresentation, etc.).
Performance	Cannot be performed.	Can be enforced if the aggrieved party chooses not to rescind within a reasonable time.
Rights	Does not grant any legal remedy.	Aggrieved party has the right to rescind the contract or enforce it.

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.

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

Ques 2: "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 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 3: "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

Rtp May 2025

Ques 4: Shri Shivay Temple Trust decided to get renovation of the temple under trust. For this purpose, the President of the trust discussed the budget with contractor. The contractor provided the budget of ₹ 5,00,000. After gaining enough membership to support the funds required renovating the temple, the committee entered in a contract with contractor for renovation. The plans for the proposed structure were submitted and passed. But as the membership list increased, the plans also expanded. Hence, the expected cost of construction is increased from ₹5,00,000 to ₹ 7,00,000. Now, increased amount of ₹7,00,000 stayed approved and obligated by the committee and contractor. Renovation work was completed, and contractor demanded the payment from committee.

Meanwhile, new members who promised to contribute did not turnup. President had filed the suit against the members who promised to contribute. Members denied on the views that their contract with committee to contribute was without any consideration hence invalid.

State with reason whether committee will succeed under the provisions of the Indian Contract Act, 1872?

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

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

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

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 2025

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.

RTP May 2025

Ques 5: Sahil deals in pre-owned cars. Raju sold his accidental car to Sahil by fraud. Sahil could not find that the car was accidental. Akshay, a customer visited the workshop of Sahil with intention to purchase a preowned car. Akshay informed Sahil his intention with the condition that car should be free from any accident. Sahil sold that car to Akshay on erroneously believing that car did not face any accident. Afterward, Akshay found that the car was actually an accidental case. He sued Sahil to avoid the contract and also for damages for expenses suffered on car.

Taking into account the provisions of the Indian Contract Act, 1872, state whether Akshay was eligible to avoid the contract and to claim damages from Sahil?

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

- (1) Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- (2) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;
- (3) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

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

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

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

PYQ Jan 2025

Ques 6: What are the agreements which are held to be opposed to public policy under the Indian Contract Act, 1872. Explain any 6 such agreements. (6 Marks)

Ans: Some of the agreements which are held to be opposed to public policy are-

(1) Trading with enemy:

Any trade with person owing allegiance to a government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

(2) Stifling Prosecution:

An agreement to stifle prosecution i.e. "an agreement to prevent proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal. Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop.

MTP1 May 2025

Ques 7: Kashish was running a business of artificial jewellery since long. He sold his business to Naman. Naman made an agreement with Kashish not to carry on the business of artificial jewellery and real diamond jewellery in that area and for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed suit against Kashish for closing the business of real diamond business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of the Indian Contract Act, 1872? (4 Marks)

Ans: According to Section 27 of the Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

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

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

PYQ May 2025

Ques 8: Explain with reference to the Indian Contract Act, 1872:

(i) When a contract is said to be induced by "undue influence".

(ii) When a party is deemed to be in a position to dominate the will of another.

(6 Marks)

Ans:

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

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

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

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

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

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

Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

Unit-4 Performance of Contract

Study Material, Mtp2 Nov 2021, Rtp June 2023

Ques 1: 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 2: 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 becomes 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 3: 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 promise:

If any promise 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).**

RTP May 2025

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

Ans. "Performance of Contract" means fulfilment of obligations to the contract.

According to **Section 37 of the Indian Contract Act, 1872**, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the

provisions of the Contract Act or of any other law. Further, the promise should have a reasonable opportunity to see that the things offered is the things contracted for otherwise performance cannot be considered as valid performance.

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

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

MTP 1 May 2025

Ques 5: Albert obtained 2 loans of ₹ 3,00,000 and ₹4,00,000 respectively from a reputed Bank. Out of these 2 loans, loan of ₹3,00,000 was guaranteed by Robert. Albert sent ₹ 2,00,000 to bank but did not intimate as to how it is to be appropriated towards the loans. The Bank appropriated the whole of 2,00,000 to the loan of ₹4,00,000 (the loan not guaranteed). Robert objected on the decision of the Bank. He argued with bank that repayment amount should be first adjusted to the guaranteed loan. State with reasons, whether the Bank was correct in its decision under the Indian Contract Act, 1872? **(3 Marks)**

Ans: **Section 60** of the Indian Contract Act, 1872 provides, where the debtor does not intimate and there are no circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor. However, it cannot be applied to a disputed debt.

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

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

MTP2 May 2025

Ques 6: P, Q and R jointly promised to pay S a sum of ₹60,000. Examine, considering the provisions of the Indian Contract Act, 1872 -

(i) Can S compel any of three parties P, Q and R to pay him ₹60,000?

(ii) R is compelled to pay the whole of the amount to S. Can he recover anything from P and Q, when -

(1) Both P and Q were solvents.

(2) P is not in a position to pay anything.

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 promise 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 promise may compel any one or more of the joint promisors to perform the whole of the promise.

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

In the instant case,

(i) S can compel any of three parties P, Q and R to pay him ₹60,000.

(ii) 1) R can recover the contribution from P and Q because P, Q and R are joint promisors.

(2) P is unable to pay anything, R is compelled to pay the whole. R is entitled to receive ₹30,000 from Q.



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, MTP2 May 2025

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 promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promise 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.

Rtp May 2025

Ques 4: M/s Janta Machine Tools & Co. contracted with M/s Ruchi Traders to make and deliver certain machinery by 31st July for ₹15 Lakhs. There was a labour strike in the factory of M/s Janta Machine Tools & Co. and it could not manufacture and deliver the machinery to M/s Ruchi Traders. Afterwards, M/s Ruchi Traders had to purchase the machinery from another manufacturer for ₹18 Lakhs. M/s Ruchi Traders was also prevented from performing a contract which was made with M/s Shiksha Technologies at the time of its contract with M/s Janta Machine Tools & Co. and were compelled to pay compensation of ₹ 2 Lakhs to M/s Shiksha Technologies. M/s Janta Machine Tools & Co. was very well informed by M/s Ruchi Traders about its contract with M/s Shiksha Technologies. M/s Ruchi Traders sued M/s Janta Machine Tools & Co for recovery of compensation of ₹3 Lakhs (i.e. ₹18 Lakhs - ₹15 Lakhs) plus ₹2 Lakhs given to M/s Shiksha Technologies. Advise under the provisions of the Indian Contract Act, 1872.

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

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

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

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

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.

Past Paper Nov 2018, Rtp May 2019, Rtp May 2020, Mtp Nov 2020, Rtp May 2019, Mtp Nov 2020, Rtp May 2020, Past Paper July 2021, Mtp1 May 2022

Ques 2: 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:

- (i) 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.
- (ii) The happening of the event is uncertain.
- (iii) 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.
- (iv) 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:

- (1) 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).**
- (2) 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).**
- (3) 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).**
- (4) 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 2025

Ques 3: 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.

Mtp1 Nov 2022, Mtp2 May 2023, MTP 1 May 2025

Ques 4: "What do you understand by a quasi-contract? Under what circumstances does it arise according to the Indian Contract Act, 1872?" **(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.

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

(i) Claim for necessities supplied to persons incapable of contracting (Section 68):

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

(ii) Payment by an interested person (Section 69):

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(iii) Obligation of person enjoying benefits of non-gratuitous act (Section 70):

In term of section 70 of the Act "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered" It thus follows that for a suit to succeed, the plaintiff must prove:

- (i) that he had done the act or had delivered the thing lawfully;
- (ii) that he did not do so gratuitously; and
- (iii) that the other person enjoyed the benefit.

(iv) Responsibility of finder of goods (Section 71):

'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'. Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

(v) Money paid by mistake or under coercion (Section 72):

"A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it". In all the above cases the contractual liability arose without any agreement between the parties.



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 2025

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 2025

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.

RTP May 2025

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

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

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

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

On the basis of the above provisions and facts of the case, the surety Sudeep is discharged as variation is made in a contract of guarantee and creditor Kishore extends the time for repayment without obtaining the consent of Sudeep.

RTP May 2025

Ques 8: Explain in brief with reference to the provisions of the Indian Contract Act, 1872, what are the rights enjoyed by Surety against the Creditor, the Principal Debtor and Co-Sureties?

Ans. In terms of the provisions of the Indian Contract Act, 1872, the surety enjoys the following rights:

Rights against the Creditor**(a) Surety's right to benefit of creditor's securities [Section 141]:**

A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

(b) Right to set off:

If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.

(c) Right to share reduction:

The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor**(a) Rights of subrogation [Section 140 of the Indian Contract Act, 1872]:**

Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor

(b) Implied promise to indemnify surety [Section 145]:

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee but not sums which he paid wrongfully.

Rights against co-sureties

"Co-sureties- When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties"

(a) Co-sureties liable to contribute equally (Section 146):

Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

(b) Liability of co-sureties bound in different sums (Section 147):

The 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.

MTP1 May 2025

Ques 9: "Explain the circumstances under which a surety may be discharged by revocation of the contract of guarantee under the Indian Contract Act, 1872." **(6 Marks)**

Ans A surety is said to be discharged when his liability as surety comes to an end. The various modes of discharge of surety are as below:

- (i) By Revocation of the contract of guarantee.
- (ii) By the conduct of the creditor, or

(iii) By the Invalidation of the contract of guarantee.

By Revocation of the Contract of Guarantee

(a) Revocation of continuing guarantee by Notice (Section 130 of the Indian Contract Act, 1872)

The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given. A specific guarantee can be revoked only if liability to principal debtor has not accrued.

(b) Revocation of continuing guarantee by Surety's Death (Section 131)

In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

(c) By Novation (Section 62)

The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

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.

MTP2 May 2025

Ques 2: Explain the circumstances under which a contract of bailment may be terminated under the Indian Contract Act, 1872.

Ans: A contract of bailment shall terminate under the Indian Contract Act, 1872 in the following circumstances:

1. On expiry of stipulated period: If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.

2. On fulfilment of the purpose: If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfilment of that purpose.

3. By Notice:

(a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.

(b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).

4. By death: A gratuitous bailment terminates upon the death of either the bailor or the bailee.

5. Destruction of the subject matter: A bailment is terminated if the subject matter of the bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for the purpose of bailment.

RTP Sept 2024

Ques. 3 Mr. Stefen owns a chicken farm near Gurugram, where he breeds them and sells eggs and live chicken to retail shops in Gurugram. Mr. Flemming also owns a similar farm near Gurugram, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel, so he had pledged his farm to Mr. Stefen for one year and received a deposit of ₹25 lakhs and went away. At that point of time, the stock of live birds was 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs.

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

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only. State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

Ans: According to **Section 163** of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

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

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

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

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

Study Material, Past Paper May 2018

Ques. 4 Give differences between Bailment and Pledge.

(4 Marks)

Ans: Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

(a) As to purpose:

Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purposes than the two referred above. Bailee takes them for repairs, safe custody etc.

(b) As to right of sale:

The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.

(c) As to the right of using goods:

Pledge has no right to use goods. A bailee can, if the terms so provide, use the goods.

(d) Consideration:

In pledge there is always a consideration whereas in a bailment there may or may not be consideration.

(e) Discharge of contract:

Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time

Study Material, Rtp June 2024, Mtp1 May 2023

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

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

(ii) Seizure of goods by customs authorities.

(4 Marks)

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

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.

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

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

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, PYQ May 2025

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 2025

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.

PYQ May 2025, MTP 1 May 2025

Ques 8: Nitin appointed Shiv as his agent to transport apples from Shimla to Delhi. Due to heavy rain in near Shimla, Shiv was stranded for more than seven days. Shiv was not in position to contact with Nitin. To save Nitin from loss, Shiv sold all the apples in the nearby market below the market rate where he was stranded. Explain with reference to the Indian Contract Act 1872, can Nitin recover the loss from Shiv as Shiv had acted beyond his authority?

OR

What are the conditions to be satisfied for an "Agent's authority in an emergency" under the provisions of The Indian Contract Act, 1872? **(7 Marks)**

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

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

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| (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available. |
| (ii) There should have been actual and definite commercial necessity for the agent to act promptly |
| (iii) The agent should have acted bonafide and for the benefit of the principal. |
| (iv) The agent should have adopted the most reasonable and practicable course under the circumstances, and |
| (v) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract. |

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

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

MTP2 May 2025

Ques 9: Enumerate and explain the duties and obligations of an agent towards the principal under the Indian Contract Act, 1872. **(6 Marks)**

Ans: The duties and obligations of an agent towards the principal under the Indian Contract Act, 1872 are following:

(i) Duty to follow instructions or customs:

According to Section 211 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 customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

(ii) Duty of reasonable care and skill:

According to section 212, an agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or caused by such neglect, want of skill or misconduct.

(iii) Duty to render proper accounts [Section 213]:

An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers.

(iv) Agent's duty to communicate with principal [Section 214]:

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in



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.

RTP May 2025

Ques 3: Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ ₹1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months.

Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which it already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company can recover amount from Ram Bilas Yadav?

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.

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

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

RTP May 2025

Ques 4: Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930

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

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

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

- Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
- In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.
- However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

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

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.

Mtp 1 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:

- the bulk shall correspond with the sample in quality;
- 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.

MTP1 May 2025

Ques 4: Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. The company informed that tins would be packed in the boxes each containing 50 tins. On delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part

of the contract. Amjuice Ltd. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930? (7 marks)

Ans: By virtue of provisions of Section 15 of the Sale of Goods Act, 1930, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

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

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

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

MTP2 May 2025, PYQ Jan 2025

Ques 5: Sidharth visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Sidharth can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car.

Ans: Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

There are two requirements for this condition to apply:

(a) Goods should be bought by description.

(b) The seller should be a dealer in goods of that description.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "**merchantable quality**", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection. Therefore, Sidharth can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.

Unit-3 Transfer of Ownership and Delivery of Goods

Past Paper Nov 2022

Ques 1: 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:

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| (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: <ul style="list-style-type: none"> (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. |

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

Ques 2: "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.

OR

"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 3: 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 4: "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 5: 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.

RTP May 2025

Ques 6: Saurabh purchased electric scooter of Vivek for ₹5000 only on the gun point. Vivek decided to file the complaint and to avoid the contract on the basis of coercion applied against him by Saurabh. But before he could do that, Saurabh sold the scooter to Vinay who had no idea about the situation on which the scooter was purchased by Saurabh. Vivek sued Saurabh and Vinay for recovery of scooter. Referring to the provisions of the Sale of Goods Act, 1930, whether Vivek was correct in his decision?

Ans. Provision: By virtue of provisions of **Section 29 of the Sale of Goods Act, 1930**, a buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale.

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

Conclusion: According to above provisions, even Saurabh purchased the electric scooter by applying coercion, Vinay got good title as he was an innocent buyer and purchased the scooter before setting aside the contract by Vivek. Hence, Vivek cannot recover the scooter from Vinay. However, Vivek may claim damages from Saurabh.

MTP1 May 2025

Ques 7: "Explain the rules relating to the delivery of goods under the Sale of Goods Act, 1930" with reference to the following:

- (i) Effect of part delivery
- (ii) Place of delivery
- (iii) Delivery of wrong quantity." (Rtp May 2025)

6 marks

Ans:

(i) Effect of part delivery (Section 34 of the Sale of Goods Act, 1930):

A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

(ii) Place of delivery [Section 36(1)]:

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract,

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

(iii) Delivery of wrong quantity [Section 37]:

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

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.

If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)].

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

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

MTP2 May 2025, PYQ Jan 2025

Ques 8: The Institute of Science and Technology, Dehradun (the buyer), placed an order for various chemicals worth ₹1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund.

4marks

Ans: Delivery of the goods to the carrier [Section 23(2) of the Sale of Goods Act, 1930]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

In the instant case, the Institute of Science and Technology, Dehradun placed an order for various chemicals worth ₹1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit.

According to **Section 23(2)**, it is an **unconditional appropriation of goods** because of which the Institute of Science and Technology, Dehradun (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

PYQ Jan 2025, MTP2 May 2025

Ques 9: (i) MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.

On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss? What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract?

4 marks

(ii) A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930.

3 marks

Ans. (i) According to **Section 18 of the Sale of Goods Act, 1930**, where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.

According to **section 20 of the Sale of Goods Act, 1930**, where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

In the instant case, since the microchips were specifically identified and were in a deliverable state when the contract was formed on August 1, 2023 ownership (and risk) likely passed to PQR Enterprises on August 1, 2023. Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:

If the microchips were not specifically identified and marked for PQR Enterprises at the time of the contract, MNO Limited will suffer the loss, as the risk would not have transferred to PQR Enterprises.

(ii) As per **Section 27 of the Sale of Goods Act, 1930**, "no one can transfer a better title than they themselves have." This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner.

Also, **Section 14(a)** imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.



Unit-4 Unpaid Seller

Mtp1 Dec 2023, MTP2 May 2025

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.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

- (a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
- (b) Retain the profit if the resale price is higher than the contract price. 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, PYQ Jan 2025

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, Rtp May 2025

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

OR

Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:

- (A) Bid by seller with or without notification
- (B) Bidder to retract from his bid
- (C) Effect of pretending bidding

4 Marks

Ans:

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.

MTP1 May 2025

Ques 6: Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

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

(ii) What would be your answer if Mr. Ganesh became insolvent within five days of contract? **7 marks**

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

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

(B) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment. Further, Section 47 provides about an unpaid seller's right of lien.

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

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

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

- (i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired. Hence, Mr. Shankar had to perform his promise of supplying 1000 Kgs of wheat.
- (ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien, and he could withhold the delivery.

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.

(i) 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 Dec 2021, Rtp Dec 2023

Ques 2: 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.

RTP May 25

Ques 3: What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?

Ans. Partnership Vs. Co-Ownership or joint ownership i.e. the relation which subsists between persons who own property jointly or in common

Basis	Partnership	Co-ownership
Formation	Always arises out of a contract (express or implied).	May arise from agreement or by operation of law (e.g., inheritance).
Implied Agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of Interest	There is a community of interest; profits and losses must be shared.	Does not necessarily involve sharing of profits or losses.
Transfer of Interest	A partner's share can be transferred only with the consent of all other partners.	A co-owner can transfer their interest without the consent of the other co-owners.

RTP May 25

Ques 4: State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

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

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

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

Ans.

(i) As per Section 4 of the Indian Partnership Act, 1932, "**Partnership**" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Yes, it is a case of partnership Reason:

The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses.

(ii) **No, it is not a case of partnership Reason:**

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

(iii) **No, it is not a case of partnership Reason:**

Persons who share amongst themselves the rent derived from a piece of land are not partners, rather they are co-owners. Because there is neither existence of business, nor mutual agency is there.

MTP1 May 2025

Ques 5: "Partners in a firm may be classified into various types based on the extent of their liability." Describe the following:

(i) Dormant Partner

(ii) Nominal Partner (PYQ Jan 2025, Past Paper Jan 2021)

(iii) Partner in profits only

(iv) Partner by holding out (PYQ Jan 2025)

7 Marks

Ans:

(i) Sleeping or Dormant Partner:

It is a person who is a partner by agreement, and who does not actively take part in the conduct of the partnership business. They share profits and losses and are liable to the third parties for all acts of the firm. They are, however not required to give public notice of their retirement from the firm.

(ii) Nominal Partner:

A person who lends his name to the firm, without having any real interest in it, is called a nominal partner. He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however, liable to third parties for all acts of the firm.

(iii) Partner in profits only:

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

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

Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

MTP2 May 2025

Ques 6: What is a Partnership Deed? Explain its significance and list the key contents typically included in a partnership deed. Why is it advisable to have the deed in writing, even though it is not mandatory?

3 Marks

Ans: Partnership Deed

Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes.

The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.

It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.

Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information: -

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud. A partnership firm may add or delete any provision according to the needs of the firm.

Mtp1 Nov 2021, Mtp2 May 2022

Ques 7: 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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Unit-2 Relations of Partners

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

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, Past Paper May 2019, Mtp Nov 2020, Mtp1 June 2023, Mtp, Jan 2025

Ques 2: 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 3: 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 2020, Rtp May 2021

Ques 4: 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) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Analysis of section 27:

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

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

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

Past Paper Jan 2021

Ques 5: 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 6: 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.

Mtp2 Jan 2025

Ques 7: 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.

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

Ques 8:(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.

Study Material, Rtp May 2018, Mtp2 Nov 2018, Mtp2 May 2021, Rtp Nov 2021, Mtp1 June 2023, Past Paper May 2022, Mtp2 Dec 2023, Rtp Dec 2023, PYQ Jan 2025

Ques 9: Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

OR

A minor admitted to the benefits of a partnership firm is entitled to certain rights and may also have liabilities to third parties for the acts of the firm. Discuss the rights and liabilities (before attaining majority only) of the minor under the Indian Partnership Act, 1932.

6 Marks

Ans: Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under **Section 30 of the Indian Partnership Act, 1932**. The following are the Rights and Liabilities (before attaining majority):

(1) Rights:

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

(2) Liabilities:

Before attaining majority:

- (a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- (b) Minor has no personal liability for the debts of the firm incurred during his minority.
- (c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee (which means minor can recover his share in the firm on proportionate basis from official receiver/assignee).

PYQ Jan 2025, MTP2 May 2025

Ques 10: P, Q and R, are partners in a construction firm, PQR Associates. P buys cement on behalf of the firm from D. The cement is used in the ordinary course of the firm's business. P uses the cement for his personal purposes. The supplier D, who is unaware of the private use of cement by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the cement was never received by it. Referring to the provisions of the Indian Partnership Act, 1932, answer the followings:

(i) Whether the Firm's contention is tenable?

(ii) What would be your answer if a part of the cement so purchased by P was delivered to the firm by him, and the rest of the cement was used by him for his private use, about which neither the firm nor the supplier were aware?

7 Marks

Ans: The given question is based on the **Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932**. Section 18 deals with the Partner to be an agent of the firm.

This means that a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually holds the character of both a principal and an agent. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far, as he acts for his partners, he may properly be deemed as an agent.

The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

According to **section 25, the partners are jointly and severally responsible to third parties** for all acts which come under the scope of their express or implied authority. "Act of firm" connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.

As per **section 26**, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:

- (a) in the ordinary course of the business of the firm
- (b) with the authority of the partners.

According to the facts given in the questions, P, a partner to PQR Associates, buys cement on behalf of the firm from D in the ordinary course of the firm's business. P uses the cement for his personal purposes. D, the supplier was unaware of the private use of cement by P and claims price from the firm. Firm refuses to pay the price on the ground that the cement was never received by it.

Referring to the stated provisions of the Indian Partnership Act, 1932, following are the answers:

(i) Said Section is applicable only to the act done by partners for the purpose of the business of the firm. In such case, partner act as the agent of the firm for the purpose of the business of the firm. Since in the given case, P, buys cement on behalf of the firm from D in the ordinary course of the firm's business.

Therefore, in the given case, firms' contention of refusal to pay the price on the ground that the cement was never received by it, is not tenable.

(ii) Further for commission of the wrongful act by the partner, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the

partner while acting:

- (a) in the ordinary course of the business of the firm
- (b) with the authority of the partners.

In the given case, part of the cement so purchased by P was delivered to the firm by him and the rest of the cement was used by him for his private use, was not known to the firm and the supplier. Since the act of the P to purchase the cement was in the ordinary course of business with the authority of the partner, However wrongful use by the partner will make the firm liable to the same extent as the partner for loss or injury caused to D. However, PQR Associates can take action against P, the partner

MTP1 May 2025

Ques 11: Rahul and Kapil are partners in the firm M/s Saxena Marble House. Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account. Rahul did not consent to Kapil before acquiring of shares. Referring to the provisions of the Indian Partnership Act 1932:

- (a) Whether the shares purchased by Rahul constitute the property of firm?
- (b) What would be your answer if Rahul debits himself in the accounts books of firm and became a debtor to the firm?

7 Marks

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

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

Further, if the contrary intension does not appear, the property acquired with the money of the firm is deemed to have been acquired for the firm. In the instant case, Rahul and Kapil are partners in the firm M/s Saxena Marble House. Without the consent of Kapil, Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account.

The answers are:

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

RTP May 25

Ques 12: Amit and Ajay started the business of wholesale trading of sugar. For this purpose, they contributed ₹3,00,000 and ₹1,00,000 respectively. Partnership deed was perfectly prepared but clause regarding share of profit was not mentioned in the deed. Due to the heavy rain, stock of sugar was spoiled, and firm incurred the loss of ₹60,000. Amit asked Ajay to contribute equally to the loss, but Ajay agreed to contribute only 25% to the loss i.e. in the ratio of capital contribution. Referring to the provisions of the Indian Partnership Act, 1932, how much to be contributed by Ajay to firm's loss?

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

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

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

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)

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| (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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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, Mtp1 Jan 2025

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	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.

Mtp1 Nov 2018, Past Paper July 2021, Mtp1 May 2022, Mtp2 May 2022, Mtp2 Nov 2022, Mtp2 June 2023

Ques 5: 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.

RTP May 2025

Ques 6: Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932.

Ans. Application for Registration (Section 58 of the Indian Partnership Act, 1932): The registration of a firm may be affected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(1) Each person signing the statement shall also verify it in the manner prescribed.

(2) A firm name shall not contain any of the following words, namely:

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Registration (Section 59): When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration.

However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

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

PYQ Jan 2025

Ques 7: "Dissolution of a partnership firm may occur by mutual agreement with the consent of the majority of partners, while compulsory dissolution requires an order from the court." Discuss this statement with reference to the relevant provisions of the Indian Partnership Act, 1932. **3 Marks**

Ans: Dissolution by Agreement (Section 40 of the Indian Partnership Act, 1932): **Section 40** gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made. Hence, the statement 'dissolution of a firm by the consent of the majority of the partners is not correct unless otherwise provided in a contract between them.

Compulsory dissolution (Section 41):

A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Hence, the statement 'compulsory dissolution requires an order from the court' is not correct.

MTP2 May 2025

Ques 8: (i) Explain the rules laid down under the Indian Partnership Act, 1932, for the mode of settlement of partnership accounts after the dissolution of a firm. What is the order in which the assets of the firm are applied?

(ii) Discuss the provisions of the Indian Partnership Act, 1932 regarding the payment of firm debts and separate debts of partners. How are the firm's property and the partners' separate property applied in settling such debts?

Ans: (i) Mode of Settlement of partnership accounts (Section 48 of the Indian Partnership Act, 1932): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be

Observed: -

(i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from capital;

(c) in paying to each partner rateably what is due to him on account of capital; and

(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

(ii) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:

(i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;

(ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

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.

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.

Past Paper Dec 2021

Ques 6: 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, MTP1 May 2025

Ques 7: Differentiate between a Limited Liability Partnership and Limited Liability Company.

OR

"Both Limited Liability Partnerships and Limited Liability Companies offer limited liability protection, yet they differ significantly in structure and governance. Discuss these differences in detail." **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, Rtp May 2020, Mtp1 Jan 2025, RTP May 2025

Ques 8: 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.

Rtp May 2020, Mtp1 Jan 2025, RTP May 2025

Ques 9: 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

Ans. 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.**

MTP2 Jan 2025, RTP Jan 25

Ques 10: 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.

PYQ Jan 2025

Ques 11: Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of the Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them

Ans: Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008): The most important document needed for registration is the incorporation document.

For a LLP to be incorporated:

- a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
- c) **Statement to be filed:**
 - there shall be filed along with the incorporation document, a statement in the prescribed form,
 - made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
 - by anyone who subscribed his name to the incorporation document,
 - that all the requirements of this Act and the rules made thereunder have been complied with,
 - in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

- (a) be in a form as may be prescribed;
- (b) state the name of the LLP;
- (c) state the proposed business of the LLP;
- (d) state the address of the registered office of the LLP;
- (e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
- (f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
- (g) contain such other information concerning the proposed LLP as may be prescribed.

(3) If a person makes a statement as discussed above which he—

- (a) knows to be false; or
- (b) does not believe to be true, shall be punishable
 - with imprisonment for a term which **may extend to 2 years and**
 - with fine which shall **not be less than ₹10,000 but which may extend to ₹5 Lakhs.**

Incorporation by registration (Section 12- Sufficient evidence): As per **section 12**, the Registrar may accept the statement delivered under **clause of sub-section (1) of section 11 as sufficient evidence** that the requirement imposed by clause (a) of the sub-section has been complied with. In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

MTP2 May2025

Ques 12: Explain the advantages of the LLP form of business. How does its legal structure make it a flexible and preferable business model for entrepreneurs? Also, discuss the legal capacities an LLP acquires upon registration.

Ans: Advantages of LLP form: LLP form is a form of business model which:

- | |
|--|
| a. is organized and operates on the basis of an agreement |
| b. provides flexibility without imposing detailed legal and procedural requirements. |
| c. Easy to form |
| d. All partners enjoy limited liability |
| e. Flexible capital structure |
| f. Easy to dissolve
Effect of registration: On registration, a LLP shall, by its name, be capable of: <ul style="list-style-type: none">a. Suing and being sued;b. acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;c. having a common seal, if it decides to have one; andd. doing and suffering such other acts and things as bodies corporate may lawfully do and suffer. |

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, Past Paper May 2018

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 assesses himself disguised that the legal entity of a limited company. The assesses 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 assesses 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 assesses, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assesses 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 Nov 2018

Ques 6: 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:

- | |
|---|
| (i) Trading with enemy: If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell. |
| (ii) Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted |
| (iii) Where companies form other companies as their subsidiaries to act as their agent |
| (iv) Company is formed to circumvent welfare of employees |
| (v) 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 7: 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 8: 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 9: 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 10: 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

Ques 11: 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 12: 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, MTP1 May 2025

Ques 13: 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.

Past Paper Nov 2022

Ques 14: 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 15: 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 16: 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 17: 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.

Rtp May 2025

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

Ans. The Articles of Association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the Articles are the internal regulations of the company (**Guinness vs. Land Corporation of Ireland**).

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

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

Rtp May 2025

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

Ans. Kinds of share capital: **Section 43 of the Companies Act, 2013** provides the kinds of share capital. According to the said provision, the share capital of a company limited by shares shall be of two kinds, namely:—

1. "Equity share capital":

with reference to any company limited by shares, means all share capital which is not preference share capital; Equity share capital— can be
(i) with voting rights; or
(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;

2. "Preference share capital":

with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
(a) **payment of dividend**, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
(b) **repayment**, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

Rtp May 2025, Mtp1 May 2025

Ques 20: XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company? **4 Marks**

Ans. According to **Section 455 of the Companies Act, 2013**, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting

transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

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

PYQ Jan 2025, Mtp2 May 2025

Ques 21: (i) "Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the members of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm.

Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient.

4 Marks

(ii) Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company?

3 Marks

Ans. (i) Formation of companies with charitable objects etc. (Section 8 company):

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

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

• The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.

- On revocation, Central Government may direct it to:
 - ✓ Converts its status and change its name
 - ✓ Wind-up
 - ✓ Amalgamate with another company having similar object.

• A partnership firm can be a member of Section 8 company.

In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation). The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm.

Hence, the ground for winding up taken on the basis of transfer of any part of profit by Harmony Foundation to the M/S LMP Associates is correct and sufficient.

However, M/S LMP Associates can become a member of Section 8 company. Therefore, this ground is not correct hence not sufficient.

(ii) **Section 5(4) and (5)** of the Companies Act, 2013 contains the following provisions:

Manner of inclusion of the entrenchment provision:

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision:

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its articles.

Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar

PYQ Jan 2025

Ques 22: Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. **7 Marks**

Ans. The Articles of Association are in fact the Bye-Laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association.

The section lays the following law-

(1) Contains regulations:

The articles of a company shall contain the regulations for management of the company.

(2) Inclusion of matters:

The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(3) Contain provisions for entrenchment:

The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) Manner of inclusion of the entrenchment provision:

The provisions for entrenchment shall only be made either on formation of a company or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Notice to the registrar of the entrenchment provision:

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(6) Forms of articles:

The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) Model articles:

A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) Company registered after the commencement of this Act:

In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

PYQ Jan 2025

Ques 23: (i) The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:

Central Government	26%
State of Maharashtra	18%
State of Tamil nadu	24%
Public	32%

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013.

(ii) Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013? **5 Marks**

Ans: (i) Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013:

No institution shall be so notified unless—

- A. it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or
- B. not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013.

By virtue of **Section 2(72)** of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited,
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

(ii) No, it is not mandatory to have common seal for the company.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Mtp1 May 2025

Ques 24: "What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013?" **7 Marks**

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

- (i) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- (ii) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
- (iii) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-
 - ➔ he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - ➔ he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
 - ➔ and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (iv) the address for correspondence till its registered office is established;
- (v) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
- (vi) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and
- (vii) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Mtp 1 May 2025

Ques 25: Sooraj Pharma Ltd., a public company, its Articles of Association empowers the managing agents to borrow both short- and long-term loans on behalf of the company, Mr. Smith, the director of the company, approached Easy Finance Ltd., a nonbanking finance company for a loan of ₹25,00,000 in name of the company. The Lender agreed and provided the above said loan. Later on Sooraj Pharma Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

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

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

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. Thus,

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

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

Mtp 2 May 2025

Ques 26: (i) Oakwood Private Limited is the holding company of Silveroak Private Limited. As per the last profit and loss account for the year ending 31st March, 2025 of Silveroak Private Limited, its turnover was ₹1.80 crore and paid-up share capital was ₹80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Silveroak Private Limited cannot be categorized as a small company.

In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act **4 Marks**

(ii) In the Blossom Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of the Companies Act, 2013:

(A) Is Blossom Private Limited no longer in existence?

(B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? **3 Marks**

Ans: (i) As per **section 2(85) of the Companies Act, 2013**, Small Company means a company, other than a public company:

(i) paid-up share capital of which does not exceed four crore rupees, and

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

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2025 of Silveroak Private Limited, its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though Silveroak Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Oakwood Private Limited). Hence, the contention of the Company Secretary is correct.

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

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

(B) The statement given is incorrect. A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts.

Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

Mtp2 May 2025

Ques 27: Explain the classification of capital under Company Law as per the Companies Act, 2013. Discuss the different types of capital and the statutory definitions associated with each. **(7 Marks)**

Ans: In the domain of Company Law, the term 'capital' is used in the following senses:

(i) Nominal or authorised or registered capital:

This form of capital has been defined in **section 2(8) of the Companies Act, 2013**. "Authorised capital" or "Nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

Thus, it is the sum stated in the memorandum as the capital of the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty. It is usually fixed at the amount, which, it is estimated, the company will need, including the working capital and reserve capital, if any.

(ii) Issued capital:

Section 2(50) of the Companies Act, 2013 defines "issued capital" which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash.

(iii) Subscribed capital:

Section 2(86) of the Companies Act, 2013 defines "subscribed capital" as such part of the capital which is for the time being subscribed by the members of a company. It is the nominal amount of shares taken up by the public. Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.

(iv) Called-up capital:

Section 2(15) of the Companies Act, 2013 defines "called-up capital" as such part of the capital, which has been called for payment. It is the total amount called up on the shares issued.

(v) Paid-up capital

is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

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

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, PYQ Jan 2025

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.

7 Marks

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.

Past Paper June 2024

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?

7 Marks

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.

RTP May 2025

Ques 8: Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14.06.2023. Sumit presented the cheque in his bank and his bank informed him on 19.06.2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instrument Act, 1881. State with reasons, whether this suit is maintainable?

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

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

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

(b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and

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

RTP May 2025

Ques 9: A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instruments Act, 1881?

Ans. As per **Section 76 of the Negotiable Instruments Act, 1881:** No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- (a)
- (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - (ii) if the instrument being payable at his place of business, he closes such **place on a business day during the usual business hours, or**
 - (iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 - (iv) if the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
- he makes a part payment on account of the amount due on the instrument,
 - or promises to pay the amount due thereon in whole or in part,
 - or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

PYQ Jan 2025, MTP2 May 2025

Ques 10: i) Anjali purchased various cosmetic products worth ₹15,000 during the last week from Sushil, a shopkeeper, on credit of one month. After a fortnight, she makes out a blank promissory note, signed it and delivered to Sushil who further endorsed it to Manish for the payment of his dues. Manish, who is holder in due course, filled up the due amount of ₹17,000 from Sushil and on maturity presented it to Anjali for payment but she refused to pay because the amount filled up is more than the agreed amount of ₹15,000. It is to be noted that the amount of ₹17,000 is covered by the stamp affixed on it. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether Anjali is liable to honour the promissory note to Manish for ₹17,000? **4 Marks**

(ii) Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns.

However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on the provisions of the Negotiable Instruments Act, 1881, examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law. **3 Marks**

Ans: (i) **Section 20 of the Negotiable Instruments Act, 1881** reads as "Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie

authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder"

In the instant case, Anjali is not liable to honour the promissory note to Manish for ₹17000. She is liable only for ₹15000.

(ii) Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881] As per section 64 of the Negotiable Instruments Act, 1881, promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

MTP1 May2025

Ques 11: "Explain the concept of 'presentment for payment' under Section 64 of the Negotiable Instruments Act, 1881. What are the consequences of non- presentment?"

Ans: Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]

Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception: Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

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

MTP1 May 2025

Ques 12: Sachin bought 1000 Kgs sugar from Saurabh for ₹40,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured by Sachin. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin? **7 Marks**

Ans: According to **section 117** of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- 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;
- an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

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

MTP2 May 2025

Ques 13: What is a Negotiable Instrument? Explain its meaning and essential characteristics. How does the Negotiable Instruments Act, 1881 classify instruments as payable to order or payable to bearer?

7 Marks

Ans: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value. The Act does not define the term 'Negotiable Instruments'.

However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer. It is to be noted that Hundies, Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or usage.

(1) A negotiable instrument is payable to order when:

- a. It is expressed to be so payable
- b. When it is expressed to be payable to a specified person and does not contain words prohibiting its transfer. (i.e. it is transferrable by indorsement and delivery)

(2) A negotiable instrument is payable to bearer when:

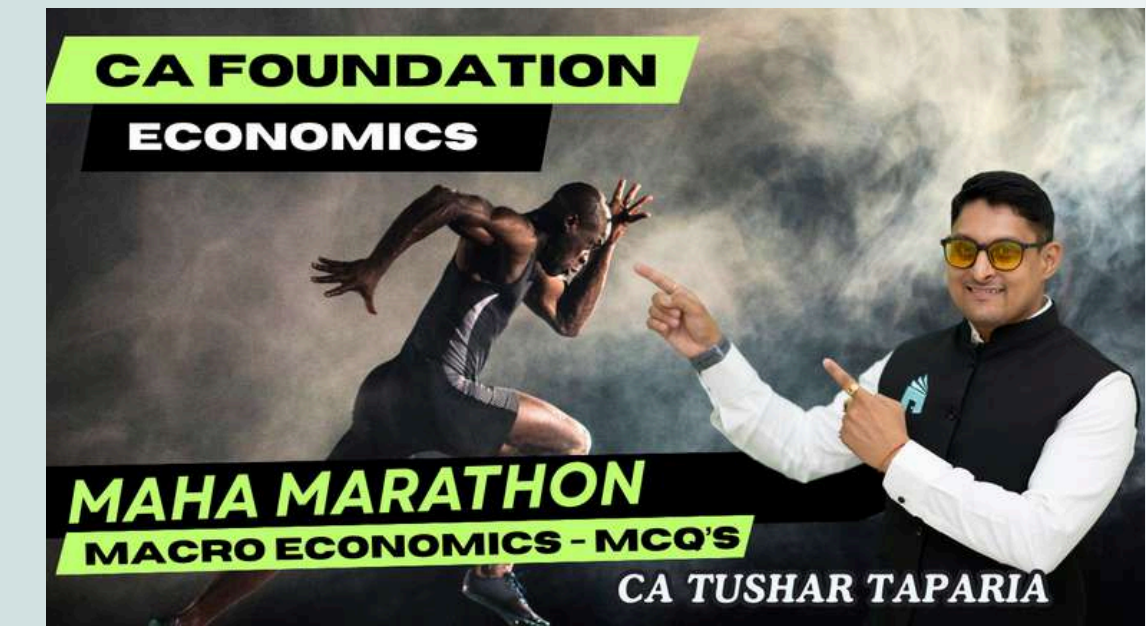
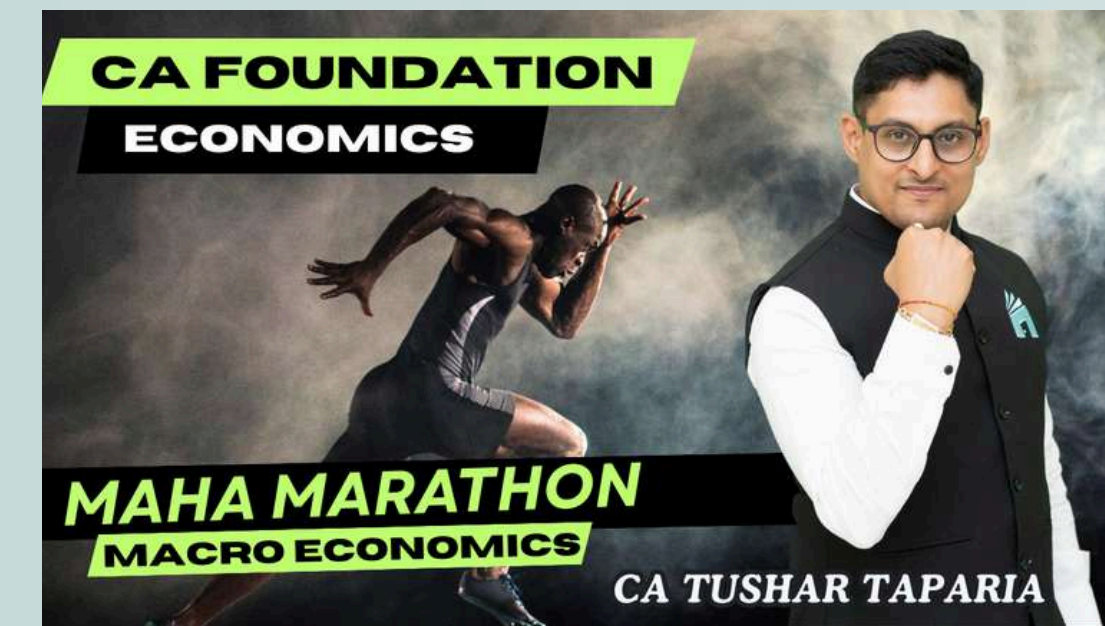
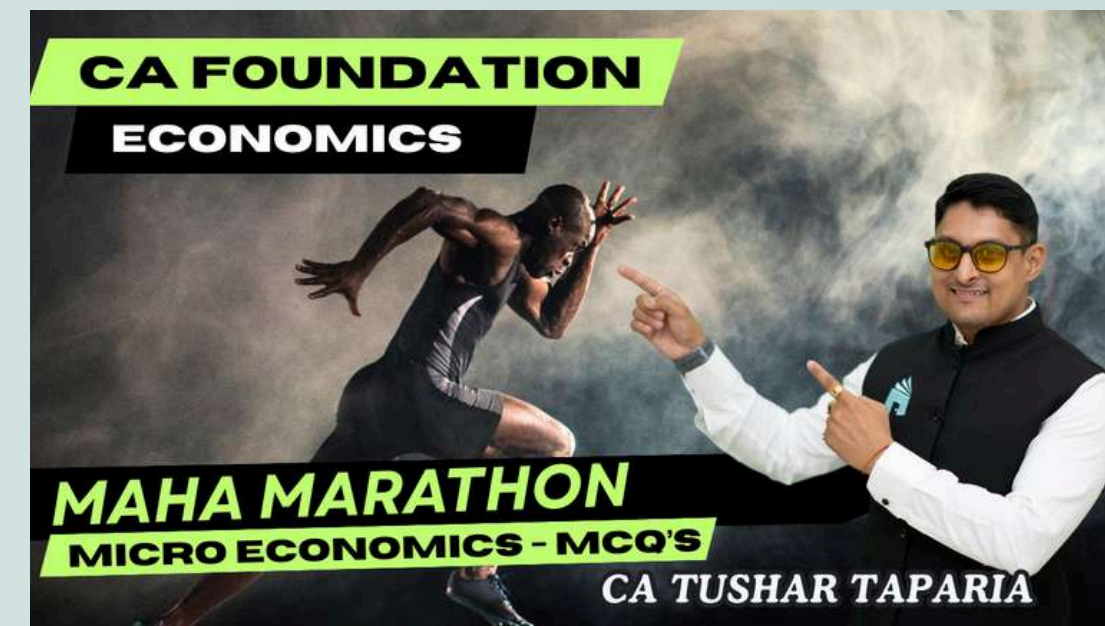
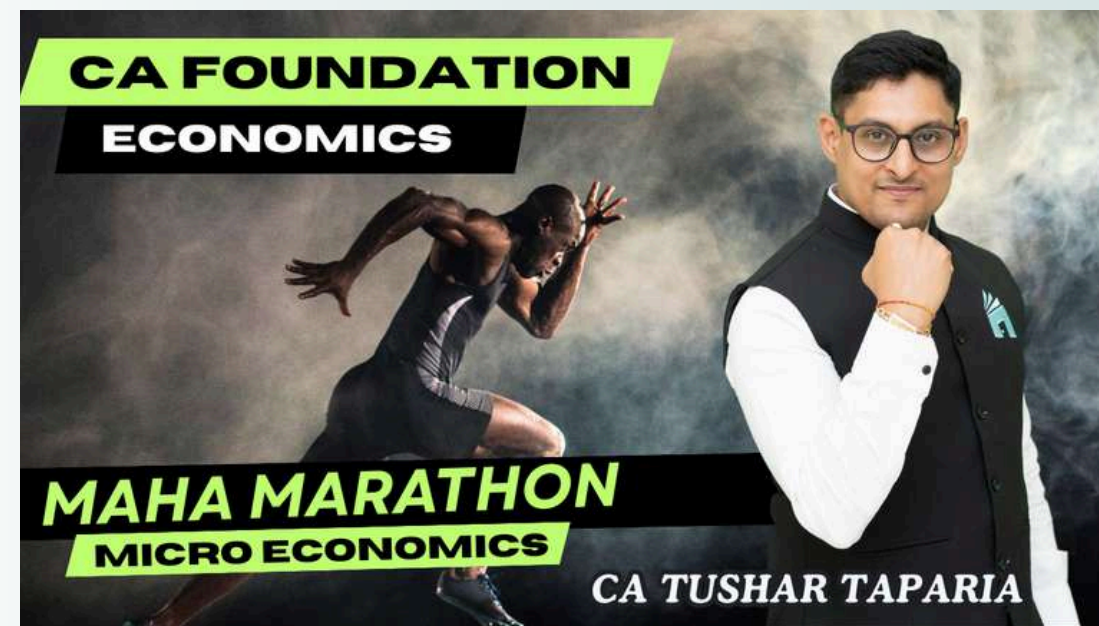
- a. When it is expressed to be so payable e.g. pay bearer
- b. When the only or last indorsement (indorsement means signing of the instrument) on the instrument is an indorsement in blank i.e., the person who possesses it can demand payment.

Essential Characteristics of Negotiable Instruments

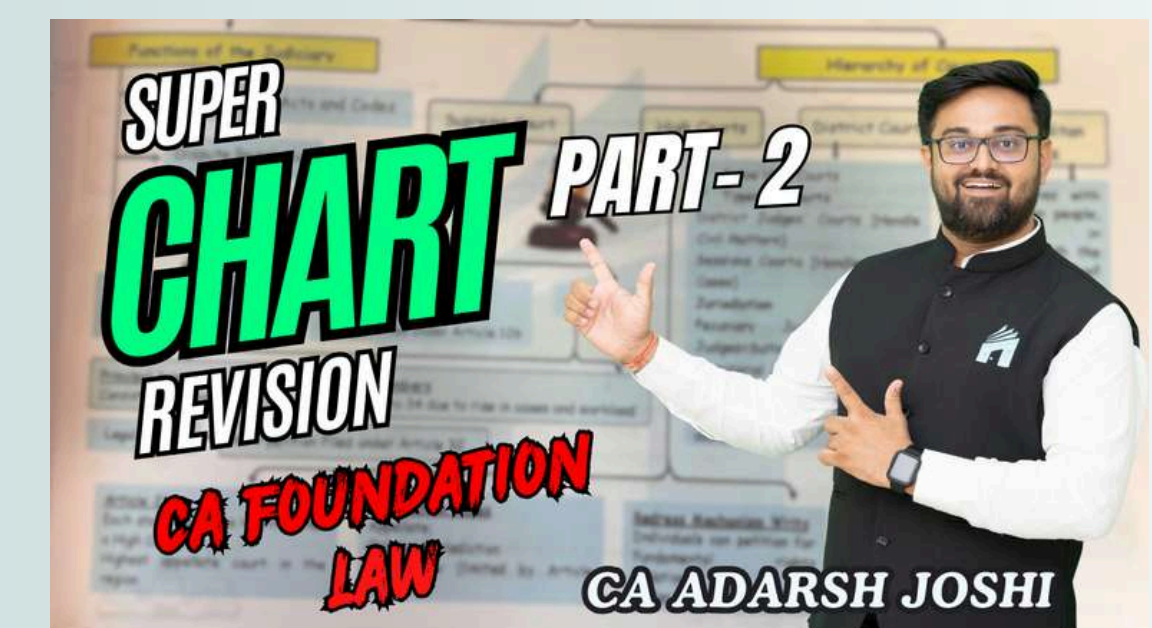
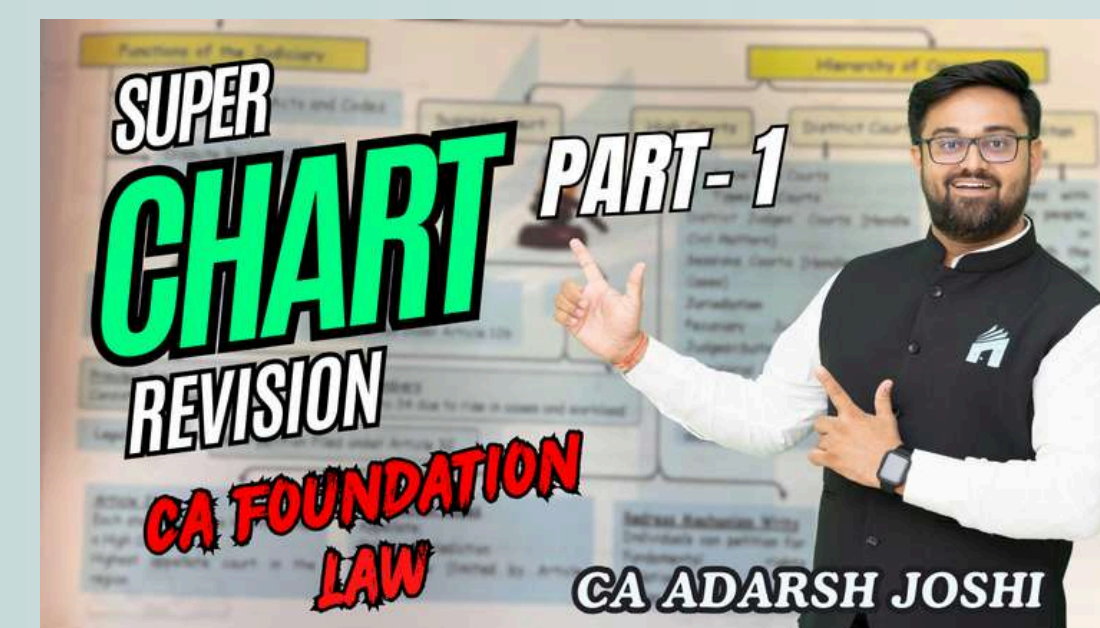
1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

CA FOUNDATION MAY 25

Marathons Live Streams



MAHA MARATHONS ECONOMICS



MAHA MARATHONS ACCOUNTING

SUPER CHART REVISION



20-20 SERIES



SUPER 80



AAKHRI WAR

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Marathons Schedule With Links

DATE	TIME	EDUCATOR	SUBJECT	TOPICS	YOUTUBE LINK
28/4/2025	1.00 PM	CA TUSHAR TAPARIA	ECONOMICS	MICRO ECONOMICS	 WATCH NOW
29/4/2025	8.00 AM	CA ADARSH JOSHI	LAW	SUPER CHART REVISION - PART I	 WATCH NOW
1/5/2025	2.00 PM	CA TUSHAR TAPARIA	ECONOMICS	MICRO ECONOMICS - MCQ'S	 WATCH NOW
3/5/2025	1.00 PM	CA TUSHAR TAPARIA	ECONOMICS	MACRO ECONOMICS	 WATCH NOW
4/5/2025	8.00 AM	CA CS DARSHAN JAIN	ACCOUNTING	MAHA MARATHON - PART I	 WATCH NOW
6/5/2025	8.00 AM	CA ADARSH JOSHI	LAW	SUPER CHART REVISION - PART II	 WATCH NOW

DATE	TIME	EDUCATOR	SUBJECT	TOPICS	YOUTUBE LINK
9/5/2025	2.00 PM	CA TUSHAR TAPARIA	ECONOMICS	MACRO ECONOMICS - MCQ'S	 WATCH NOW
11/5/2025	8.00 AM	CA CS DARSHAN JAIN	ACCOUNTING	MAHA MARATHON - PART II	 WATCH NOW
14/5/2025	8.00 AM	CA CS DARSHAN JAIN	ACCOUNTING	20-20	 WATCH NOW
16/5/2025	8:00 am	CA ADARSH JOSHI	LAW	SUPER 80	 WATCH NOW
20/5/2025	3.00 PM	CA TUSHAR TAPARIA	ECONOMICS	AAKHRI WAR	 WATCH NOW

THANK YOU