For CA FOUNDATION

PAPER 2

BUSINESS LAWS

COMPILER

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FOUNDATION LAW
QUESTION PAPERS WITH SOLUTIONS
JANUARY 2025

- **Question No. 1 is compulsory.**
- **Answer any four questions from the remaining five questions.**
- **Working notes should form part of the answers.**
- **Candidate found copying or receiving or giving any help or defying instructions of the invigilators or having/using mobile phone or smart watch will be expelled from the examination and will also be liable for further punitive action.**

1. (a) Examine the validity of the following agreements under the provisions of The Indian Contract Act, 1872 and justify your answer: **(07)**

   (i) Mrs. Priya pays a sum of ₹ 10,000 to a marriage bureau to provide information about the prospective grooms for her daughter's marriage.

   (ii) Bharat agrees with John to sell his white bull. Unknown to both the parties, the bull was dead at the time of agreement.

   (iii) Rishabh sells the goodwill of his shop to Omkar for ₹ 10,00,000 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 ₹ 2,00,000 was agreed to be sold for just ₹ 25,000 by a person of unsound mind.

   (b) (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, & a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit & transferred some amount to M/S LMP Associates (a Partnership firm and one of the member 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 would up on the ground that a partnership firm cannot be a member of the section 8 company & it 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. **(04)**

(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? **(03)**

(c) 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. **(06)**

2. (a) (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 see your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract? **(04)**

(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. **(03)**

(b) 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. **(07)**

(c) 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. **(06)**

3. (a) 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? **(07)**

(b) (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 Tamilnadu	24% and
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. **(05)**

(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? **(02)**

(c) What are the agreements which are held to be opposed to public policy under The Indian Contract Act, 1872. Explain any 6 such agreements. **(06)**

4. (a) A, B and C jointly promised to pay D a sum of ₹ 6,000. Examine, considering the provisions of The Indian Contract Act, 1872 - **(07)**

(i) Can D compel any of three parties A, B and C to pay him ₹ 6,000?

(ii) C is compelled to pay the whole of the amount to D. Can he recover anything from A and B, when -

(1) Both A and B were solvents.

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

(b) What are the rules governing the compensation payable in the event of dishonour of a negotiable instrument under the provisions of The Negotiable Instruments Act, 1881? **(07)**

(c) 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 Indian and the hierarchy of courts and briefly explain their functioning under the Indian Regulatory Framework. **(06)**

5. (a) (i) The Institute of Science, Pune (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. **(04)**

(ii) Adarsh 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 Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car. **(03)**

(b) (i) Explain the following terms under The Indian Partnership Act, 1932: **(04)**

(1) Partner by holding out

(2) Nominal Partner

(ii) "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. **(03)**

(c) Explain with reference to The Indian Contract Act, 1872: **(06)**

(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. (a) (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? **(04)**

(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. **(03)**

(b) What are the conditions to be satisfied for an "Agnet's authority in an emergency" under the provisions of The Indian Contract Act, 1872? **(06)**

OR

(b) Both a sub-agent and a substituted agent are appointed by the agent, however, there are some points of distinction between the two. Elaborate any 6 points. **(06)**

(c) What are the rights of a buyer, when seller commits a breach of contract under the provisions of The Sale of Goods Act, 1930? **(07)**

SEPTEMBER 2024

Q.1. (a) (i) Mr. L let out his residential house to Mr. M for ₹ 50,000 p.m. for a period of one year. According to the Rent agreement, electricity bill will be paid by Mr. L. But Mr. L could not pay electricity dues up to 5 months, due to his financial hardships. The Electricity Board sent the notice of disconnection, if it is not paid within a week's time. To avoid all this, Mr. M paid the electricity bill of ₹ 50,000 with penalty. Later on, L refused to reimburse ₹ 50,000 and argued that he has paid bill voluntarily because of his own interest. Decide with reference to provisions of The Indian Contract Act, 1872 whether Mr. M is entitled to be reimbursed by Mr. L? **(03)**

(ii) Mr. A offered to sell 25 chairs to Mr. B @ ₹ 1,500 per chair on 12.02.2024. A promised B that he would keep the offer open till 15.02.2024. However, on 13.02.2024, he sold those chairs to Mr. C @ ₹ 1,700 per chair without the knowledge of B. Mr. B communicated the acceptance of the above offer on 14.02.2024. Advise, with reference to provisions of The Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A? **(02)**

(iii) Mr. A was running an orphanage. His friend Mr. S, a philanthropist agreed to donate ₹ 2 lakh for treatment of a child, who was suffering from cancer. On emergency Mr. A incurred ₹ 1.5 lakh on treatment of child. Now Mr. S refused to pay. Whether Mr. A can claim ₹ 1.5 lakh from Mr. S with reference to provisions of The Indian Contract Act, 1872? **(02)**

Ans. (a) (i) According to Section 69 of the Indian Contract Act, 1872, a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the instant case, Mr. M paid the electricity bill to avoid the disconnection that was pending due to Mr. L's failure to fulfil his contractual obligation. Hence, Mr. M is entitled to be reimbursed ₹ 50,000 from Mr. L.

(ii) In terms of Section 5 of the Indian Contract Act, 1872, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.

Accordingly, an offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

In the instant case, B cannot claim damages from A because the offer made by A is a mere offer and it can be withdrawn whenever A desires.

(iii) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).

However, in the following case, the agreement though made without consideration, will be valid and enforceable.

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

(b) (i) Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short-listed friends as a nominee with effect from 1st January, 2024. **(04)**

(1) Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.

(2) Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.

Referring to the provisions of the Companies Act, 2013, advise Kamal regarding eligibility of his short-listed friends to be appointed nominee and the procedure to be followed for changing the name of the nominee as per the provisions of The Companies Act, 2013.

(ii) XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹ 1 crore. Referring to the provisions of The Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company? **(03)**

Ans. (b) (i) As per Rule 3 of the *Companies (Incorporation) Rules, 2014:*

Only a natural person who is an Indian citizen whether resident in India or otherwise

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Here, "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar can be appointed as a nominee in the OPC by Kamal as he is an Indian Citizen and non-resident in India.

Procedure for changing the nominee: The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar.

Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

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

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

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

(c) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) "If a partner is otherwise expelled; the expulsion is null and void." Discuss. **(04)**

(ii) "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse. **(02)**

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

According to Section 33 of the Indian Partnership Act, 1932

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

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

(iii) it has been exercised in good faith.

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

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

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

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

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

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

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

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion, until public notice is given of the expulsion.

However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

Q.2.(a)

(i) M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 20 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.

On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties? **(04)**

(ii) Kartik agreed to sell his laptop to Vasant for a price to be fixed by Kusum a hardware engineer. However, before the delivery of the laptop, Kartik changed his mind and did not share any particulars and configuration of the laptop with Kusum, which made her unable to do the valuation. Kusum refused to do valuation.

Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it. However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930. **(03)**

Ans. (a) (i) According to 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.

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.

Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description.

ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that 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.

(ii) Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. 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.
2. 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.

In the instant case, as Kusum cannot do valuation of laptop due to non-sharing of particulars and configuration by Kartik who was bound by his promise, the agreement will be void.

The other remedy available to Vasant is that he can claim damages from Kartik as he will be liable for the damages to Vasant who is not at fault.

(b) Referring to the provisions of the Companies Act, 2013, answer the following:

(i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances. **(05)**

(ii) What is the effect of Memorandum and Articles when registered? **(02)**

Ans. (b) (i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions."

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:

(1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.

(2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.

(i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.

(ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.

(3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the

piercing of the veil to look at the real transaction ***(The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).***

(4) Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

(5) Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

(ii) **Effect of Memorandum and Articles:** As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

(c) Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. **(05)**

(ii) What do you mean by a Small Limited Liability Partnership? **(02)**

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

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

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub- section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

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

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) **Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]:** It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

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

Q.3.(a) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal to Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent ₹ 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Adivse Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm. **(03)**

(ii) On admission as a new partner, Amar agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by the all partners including Amar. Examine, whether Amar will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm. **(02)**

(iii) Suman, having 10% share in the property of ₹ 200 lakh of a firm retires from the firm on 31st March, 2023. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of ₹ 10 lakh during the financial year ending 31st March, 2024. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed ₹ 3 lakh from the firm toward the use of her share in the property and profit of the firm which was rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of The Indian Partnership Act, 1932. **(02)**

Ans. (a) (i) Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

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

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

Hence Gopal is liable to Sundar & not to Madhav for the liability of the Firm.

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

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

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

(iii) According to section 37 of the Indian Partnership Act, 1932,

- Where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners
- carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary,
- the outgoing partner or his estate is entitled at the option of himself or his representatives
- to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or
- to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. ₹ 1,20,000 (6% of ₹ 20 Lakh) or a share of the profits i.e. ₹ 1 Lakh (10% of ₹ 10 Lakh) from the firm for the use of her share in the property.

Therefore, claim of Suman of ₹ 3 Lakh is not valid.

(b) (i) JV Limited borrowed a secured loan of ₹ 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ₹ 1 crore. The bank released the loan amount in two instalments of ₹ 1 crore and ₹ 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ₹ 5 crore on the ground that the borrowing was ultra vires the company. The Company's books of account show that the company has utilised the loan amount of ₹ 3 crore for repayment of its lawful debts. The utilisation of the remaining ₹ 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan. **(04)**

(ii) After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.**(03)** Would your answer be different, if the company had a company secretary?

Ans. (b)

(i) **Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that 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.

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.

In the instant case, borrowing more than ₹ 1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹ 1 crore.

Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ₹ 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), 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.

Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.

Ultimately, the company has no remedy available to recover the balance amount of loan of ₹ 1 crore as the spending thereof is not traceable.

(ii) The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.
In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.
Hence, yes, the answer will be different.

(c) (i) In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of The Indian Contract Act, 1872. **(03)**

(ii) What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872? **(03)**

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts

Ans. (i) **Ordinary damages:** 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 cause to him thereby, which

naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

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 calculation and the necessity to convince outside parties.

(ii) (A) **Agreement made based on natural love and affection:** Conditions to be fulfilled under section 25(1) of the Indian Contract Act, 1872

(i) It must be made out of natural love and affection between the parties.

(ii) Parties must stand in near relationship to each other.

(iii) It must be in writing.

(iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

(B) **Promise to pay time barred debts:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

Q.4.(a) (i) Raghav found gold and diamond studded wristwatch value approximately ₹ 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not turn up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his

watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he incurred ₹ 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872. **(04)**

(A) Gifting the wristwatch to his son.

(B) Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.

(C) Retaining the possession of wristwatch till recovery of lawful expenses.

(D) Selling of wristwatch for recovery of expenses.

(ii) Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woolen clothes for men, women and kids like sweaters, monkey caps, mufflers, woolen coats, hand gloves etc. before the commencement of the winter season. The agreement expressly provides that the woolen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing the situation and answer the following questions in light of the provisions of The Indian Contract Act, 1872: **(03)**

(A) Whether company can reject the total supply by women group?

(B) Whether company can accept the total supply on request of women group?

(b) (i) With reference to provisions of The Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be compiled with for not constituting such an offence? **(04)**

(ii) (A) All cheques are bills while all bills are not cheques. Explain the additional features of a cheque which differentiate a cheque from bill as per the Negotiable Instruments Act, 1881. **(03)**

(B) Ambiguous instrument

(c) Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework. **(06)**

Ans. (a) (i) **Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872):** 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.

The right of finder of lost goods- may sue for specific reward offered [Section 168]: The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

(A) **Gifting the wristwatch to his son Mahesh is unlawful.** Raghav had no ownership rights over the watch and could not legally transfer it to someone else.

(B) **Warning Madhav to Sue for Recovery of Lawful Expenses:** Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.

(C) **Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses:** Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.

Selling of Wristwatch for Recovery of Expenses: the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and selling the watch would be unlawful.

(ii) According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of acceptance of performance at time other than agreed upon –

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

In the instant case,

(A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.

(B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agreed.

(b) (i) According to 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 honor 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.

When section 138 shall not apply: unless the below given conditions are complied with—

(a) **Cheque presented within validity period:** The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) **Demand for the payment through the notice:** the payee or the holder in due course of the cheque, as the case may be, 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 by him from the bank regarding the return of the cheque as unpaid, and

(c) **Failure of drawer to make payment:** the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

(ii) (A) According to the definition of cheque under section 6 of the Negotiable Instruments Act, 1881, a cheque is a species of bill of exchange. Thus, it should fulfil all the essential characteristics of a bill of exchange.

The following two features distinguish a cheque from bill

(a) Must be drawn on a specified banker

(b) It must be payable on demand

Thus, all cheques are bills while all bills are not cheques.

(B) **Ambiguous Instrument:** Section 17 of the Act, reads as: "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.

(c) 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.

Q.5.(a) (i) Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal 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 Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok. **(04)**

(ii) Ansari of Jaipur sold 100 smart TV set @ ₹ 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for

transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ₹ 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. **(03)**

Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.

Answer the following questions under the provisions of the Sale of Goods Act, 1930:

(A) Whether Ansari has right to stop the goods in transit?

(B) Whether Baburam can claim loss suffered due to non-delivery from Ansari?

Ans. (a) (i) 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, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul 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 Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh.

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

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

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

(ii) According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non-delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

(b) State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932. **(07)**

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

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

(a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

(b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as

partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

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

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

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

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

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

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

(i) Deadlock in the management.

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

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

(c) In accordance with the provisions of the Indian Contract Act, 1872, answer the following: **(06)**

(i) Rights of Bailor against any wrong doer (Third Party)

(ii) Duties of the Pawnee

Ans. **(c)** (i) **Suit by bailor & bailee against wrong doers [Section 180 of the Indian Contract Act, 1872]:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

(ii) **Duties of the Pawnee**

Pawnee has the following duties:

a. Duty to take reasonable care of the pledged goods.

b. Duty not to make unauthorized use of pledged goods.

c. Duty to return the goods when the debt has been repaid or the promise has been performed.

d. Duty not to mix his own goods with goods pledged.

e. Duty not to do any act which is inconsistent with the terms of the pledge.

f. Duty to return accretion to the goods, if any.

Q.6. (a) Referring to the provisions of the Negotiable Instruments Act, 18881, answer the following in the given scenario:

(i) Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation,

decide, whether Akash can enforce the payment of the bill against Baban or the previous parties. **(04)**

(ii) Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA-based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company. **(03)**

Ans. (a) (i) Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable. Delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57).

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid.

Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

(ii) **As per section 11 of the Negotiable Instruments Act, 1881, a** promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

(b) Answer the following as per the provisions of the Indian Contract Act, 1872

(i) 'Agent cannot personally enforce, nor be personally bound by, contracts on behalf of the principal' however there are some exceptions to this general rule, explain. **(04)**

(ii) State the rights of Indemnity-holder when sued. **(02)**

OR

(i) Explain any four differences between Contract of Indemnity and Contract of Guarantee. **(04)**

(ii) Whether the threat to commit suicide is coercion? **(02)**

(b) (i) Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

(1) **Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal: -** When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.

(2) **Where the agent does not disclose the name of his principal or undisclosed principal;** (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.

(3) **Non-existent or incompetent principal:** Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.

(4) **Pretended agent** - if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.

(5) **When agent exceeds authority**- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

(ii) **Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872):** The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

(a) all damages which he may be compelled to pay in any suit

(b) all costs which he may have been compelled to pay in bringing/ defending the suit and

(c) all sums which he may have paid under the terms of any compromise of suit.

OR

(b) (i) **Distinction between a Contract of Indemnity and a Contract of Guarantee**

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only **two parties** namely the indemnifier [promisor] and the indemnified [promisee]	There are **three parties**- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non- performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for 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
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

(ii) Whether the threat to commit suicide is coercion?

Suicide though forbidden by Indian Penal Code is not punishable, as a dead man cannot be punished. But Section 15 of the Indian Contract Act, 1872 declares that committing or threatening to commit any act forbidden by Indian Penal Code is coercion. Hence, a threat to commit suicide will be regarded as coercion.

(c) (i) Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930: **(04)**

(A) Bid by seller with or without notification

(B) Bidder to retract from his bid

(C) Effect of pretending bidding

(ii) Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930. **(03)**

Ans. (i) Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

(A) Bid with notification: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

Bid by seller without notification: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(B) Bidder to retract from his bid: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

(C) Effect of pretending bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

(ii) **Delivery of wrong quantity [Section 37 of the Sale of Goods Act, 1930]:** Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]

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

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

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

JUNE 2024

Q.1. (a) R owns an electronics store. P visited the store to buy a water purifier priced at ₹ 54,000/-. He specifically requested R for a purifier with a copper filter. As P wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, R demands a guarantor for the transaction. S (a friend of P) came forward and gave the guarantee for payment of water purifier. R sold P, a water purifier of a specific brand. P made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act 1872, the liability of S as a guarantor to pay the balance price of water purifier to R.

What will be your answer, if R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither P nor S was aware of this fact and upon discovering the truth. P refused to pay the price. In response to P's refusal, R filed the suit against S, the guarantor. Explain with reference to the Indian Contract Act 1872, whether S is liable to pay the balance price of water purifier to R? **(07)**

Ans. (a) As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default.

In this case, S has given a guarantee for P's payment obligation towards R. When P defaulted after making four monthly instalments and became insolvent, S's liability as a guarantor will come into existence.

According to Section 128 of the Act, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of 30,000 to R. [54,000 - (4×6,000)]

In the second situation, R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here R misrepresented the filter type and both P and S were unaware of this fact. The creditor (R) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from S will be considered to be invalid.

Consequently, S cannot be held liable to pay the balance price of the water purifier to R.

(b) A company, ABC limited as on 31.03.2023 had a paid-up capital of 1 lakh (10,000 equity shares of ₹10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ₹10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.

Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited.

State the relationship if any, between ABC limited & XYZ private limited as per the provisions of The Companies Act, 2013. **(07)**

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 31·03·2023, ABC Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each)· In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed· Post-issue, the total paid-up capital of ABC Limited is ₹ 2 lakhs (20,000 equity shares of ₹ 10 each)·

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

XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors· But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors·

As per section 2(6) of the Act, Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company·

The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement·

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company·

Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited·

(c) The Indian Partnership Act does not make the registration of firms compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration· Still, there are some eases where non-registration of firm does not affect certain rights· Explain with reference to the provisions of the Indian Partnership Act, 1932· **(06)**

Ans· 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. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

Exceptions: Non-registration of a firm does not, however affect the following rights:

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

Q.2.(a) Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain.

(i) Can Priya take-back the vehicle from Sony?

(ii) Will your answer be different, if Priya had not handed over the vehicle to Sony? **(07)**

Ans. (a) Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

(1) fixed by the contract, or

(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or

(3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. *Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided.*

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

2. *In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.*

   (i) *In the instant case, Priya handed over the keys of her two-wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.*

   (ii) *If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.*

(b) *Ram wants to incorporate a company in which he will be the only member. According to provisions of The Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company?* **(07)**

Ans. *(a) Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.*

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) - salient features

- Only one person as member.
- Minimum paid up capital - no limit prescribed.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.
  - Shall be eligible to incorporate an OPC;
  - Shall be a nominee for the sole member of an OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or concerted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.
- If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Here the member can be the sole member-cum-director.

(c) A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.

(i) Body Corporate

(ii) Mutual Agency

(iii) Foreign LLPs

(iv) Artificial legal person **(06)**

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

Q.3. (a) (i) P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932. Can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business? **(04)**

(ii) A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. 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. **(03)**

Ans. (a) (i) Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner/partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

(ii) According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.

As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:

(a) in the ordinary course of the business of the firm, or

(b) with the authority of the partners.

Section 27 provides that the firm is liable if a partner, acting within the scope of his apparent authority, receives money or property from a third party and misapplies it, or if the firm in the course of its business receives money or property and the same is misapplied while it is in the custody of the firm.

In the instant case, both A and B are liable to C for the wrongful acts committed by B. A cannot avoid liability merely on the grounds of being a sleeping partner.

(b) (i) 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 is as under:

(1)	Government of Indian	20%
(2)	Life Insurance Corporation of India (Public Institution)	8%
(3)	Government of Tamil Nadu	10%
(4)	Government of Rajasthan	10%
(5)	ABC Limited (owned by Government Company)	15%

As per above shareholding, state whether XYZ limited be called a government company under the provisions of The Companies Act, 2013. **(04)**

Ans. (i) 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.

(ii) M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died? **(03)**

Ans. **One of the features of a company is that it has perpetual succession.** As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not affected, since the shares held by M and N will be legally transmitted to their legal heirs.

(c) 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? **(06)**

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

(a) Rights against the creditor;

(b) Rights against the principal debtor;

(c) Rights against co-sureties.

Right against the Creditor

(a) **Surety's right to benefit of creditor's securities [Section 141]:** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

(b) **Right to set off:** If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.

(c) **Right to share reduction:** The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

(a) **Rights of subrogation [Section 140 of the Indian Contract Act, 1872]:** Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

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

(b) **Implied promise to indemnify surety [Section 145]:** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

Rights against co-sureties

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

(a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

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

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

Q.4. (a) (i) Mr. J entered into an agreement with Mr. S to purchase his house for ₹ 20 lakh, within three months. He also paid ₹ 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid. **(04)**

(ii) 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? **(03)**

Ans. (i) **According to section 56 of the Indian Contract Act, 1872, an agreement to do an act impossible in itself is void.**

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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.

In the instant case, Mr. J entered into a contract with Mr. S to purchase his house for ₹ 20 lakh, with a token payment of ₹ 50,000. The agreement included a condition that the sale would be completed within three months. Before the completion of the sale, the house was demolished by the local administration. This event made it impossible for Mr. S to sell the house to Mr. J as agreed.

In this situation, Mr. J is required to refund 50,000 token money paid to Mr. S, as the contract to sell the house has become void due to the demolition of the house by the local administration, as a result of which it becomes impossible to sell the house on the part of S.

(ii) **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, hiss 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.

(b) 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 Instrument Act, 1881? **(07)**

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 her 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·

(c) Describe in brief about the following Regulatory bodies of the Government of India:-

(i) Securities Exchange Board of India

(ii) Reserve Bank of Indian

(iii) Insolvency & Bankruptcy Board of India **(06)**

Ans· (i) The Securities and Exchange Board of India (SEBI):

- It 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 though the SEBI Act, 1992.

(ii) Reserve Bank of India (RBI):

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment & settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(iii) Insolvency and Bankruptcy Board of India (IBBI)-

- It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA). Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1st October 2016 and given statutory powers through the insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

Q.5. (a) PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024. Auction sale was started at 10 a.m. in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:

Mr. Neel	₹ 5.70 lakh
Mr. Raj	₹ 4.85 lakh
Mr. Dev	₹ 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer.

Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

For another bid of Italian Furniture was made by two parties as follows:

Sale was completed in favour of Mr. Dheer instead of Mr. Madhu.

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not? **(07)**

Ans. (a) An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction.

In terms of the provisions of the above Section, following are some of the requirements, which inter alio are required to be complied with for conduct of a valid auction sale-

(i) **Where the goods are sold in lots:** Where the goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) **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.

(iii) **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.

(iv) **Reserved price:** The sale may be notified to be subject to a reserve or upset price;

In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

(b) "Dissolution of partnership doesn't mean dissolution of firm". Do you agree with this statement? State any three situations where court can dissolve the partnership firm. **(07)**

Ans. Dissolution of partnership doesn't mean dissolution of firm. According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Thus, the dissolution of firm means the discontinuation of the legal relation, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, 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, it is called dissolution of partnership. 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.

Important note: Different mode of presentation to an answer

Dissolution of partnership doesn't mean dissolution of firm. This statement can be proved with the help of some points of distinction between both of them, which are as follows:

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	**Continuation of business**	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	**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.
3.	**Order of court**	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	**Scope**	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	**Final closure of books**	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

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 grounds:

(a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

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

(c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

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

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

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

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

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

(i) Deadlock in the management.

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

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

(c) "Where a party to a contract refuses altogether to perform, or is disabled from performing his part of it, the other party has a right to rescind it". Discuss this statement and the effects of such refusal under the provisions of The Indian Contract Act, 1872. **(06)**

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.

Anticipatory breach of a contract may take either of the following two ways:

(a) Expressly by words spoken or written, and

(b) Impliedly by the conduct of one of the parties.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows:

"When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

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

(1) 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

(2) 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.

Q.6.(a) 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- **(07)**

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

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

Ans.(a) 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 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,

(i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ₹ 20,000, or with both.

(ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

(b) Explain the term Wagering agreement in the light of the Indian Contract Act, 1872. Also, explain some transactions resembling with wagering transaction but which are not void. **(06)**

OR

What is the meaning of contingent contract? Write briefly its essentials. Also, explain any three rules relating to enforcement of a contingent contract. **(06)**

Ans. (b) 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

(i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.

(ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.

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

(iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

OR

(b) Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) **The contingent event should not be a mere 'will' of the promisor.** The event should be contingent in addition to being the will of the promisor.

(d) **The event must be uncertain.** Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872)

"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".

Rules Relating to Enforcement of a contingent contract:

The rules relating to enforcement of a contingent contract are laid down in **sections 32, 33, 34, 35 and 36 of the Act.**

(a) **Enforcement of contracts contingent on an event happening:** Section 32 says that "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void".

(b) **Enforcement of contracts contingent on an event not happening:** Section 33 says that "Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before".

(c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**

Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies".

(d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

(e) **Contingent on specified event not happening within fixed time:** Section 35 also says that – "Contingent contracts to do or not to do anything,

if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

(f) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

(c) J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price. The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930. **(07)**

Ans. According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods & in case no time is fixed after the lapse of reasonable time.

In the given case, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags, the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100. A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

FOUNDATION LAW – RTPS

MAY 2025

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

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

3. Sahil deals in pre-owned cars. Raju sold his accidental car to Sahil by fraud. Sahil could not find that the car was accidental. Akshay, a customer visited the workshop of Sahil with intention to purchase a pre-owned car. Akshay informed Sahil his intention with the condition that car should be free from any accident. Sahil sold that car to Akshay on erroneously believing that car did not face any accident. Afterward, Akshay found that the car was actually an accidental case. He sued Sahil to avoid the contract and also for damages for expenses suffered on car. Taking into account the provisions of the Indian Contract Act, 1872, state whether Akshay was eligible to avoid the contract and to claim damages from Sahil?

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

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

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

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

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

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

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

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

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

(A) Bid by seller with or without notification

(B) Bidder to retract from his bid

(C) Effect of pretending bidding

(ii) Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930.

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

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

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

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

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

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

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

17. Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

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

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

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

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

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

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

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

ANSWERS

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

Criminal Law

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

Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Civil Law

Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort.

Some examples of civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.

Common Law

A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle

supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

Principles of Natural Justice

Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law. Nemo judex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally meaning "hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

2. As per Section 25 of the Indian Contract Act, 1872, an agreement made without consideration is void. However, there are certain exceptions to this rule. If a 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 contributed did not turn up. The committee had filed the suit against the members who promised to contribute. But members denied the view that their contract with the committee to contribute was without any consideration, hence invalid.

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

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

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

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

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

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

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

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

4. "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of the Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the promisee should have a reasonable opportunity to see that the things offered is the things contracted for otherwise performance cannot considered as valid performance.

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

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

5. Section 73 of the Indian Contract Act, 1872, has laid down the rules as to how the amount of compensation is to be determined. On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach. Compensation can be claimed for any loss or damage which naturally arises in the usual course of events. Further, compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice. But the party suffering from the breach is bound to take reasonable steps to minimise the loss. No compensation is payable for any remote or indirect loss.

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

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

6. (a) The differences between void contract and voidable contract are as follows:

Sr. No.	Basis	Void Contract	Voidable Contract
1.	**Meaning**	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

2.	**Enforceability**	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of the other party.
3.	**Cause**	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
4.	**Performance of contract**	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5.	**Rights**	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time If so rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

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

Further, according to section 135, a contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time

to, or promises not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

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

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

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

(a) Rights against the creditor;

(b) Rights against the principal debtor;

(c) Rights against co-sureties.

Right against the Creditor

(a) Surety's right to benefit of creditor's securities [Section 141]: A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

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

(c) Right to share reduction: The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

(a) Rights of subrogation [Section 140 of the Indian Contract Act, 1872]: Where, a guaranteed debt has become due, or default of the principal debtor to perform

a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

(b) **Implied promise to indemnify surety [Section 145]:** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee but not sums which he paid wrongfully.

Rights against co-sureties

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

(a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

(b) **Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

9. As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. Further Section 2(6) defines "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

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

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

- fixed by the contract,
- or agreed to be fixed in a manner provided by the contract, e.g., by a valuer,
- or determined by the course of dealings between the parties. Further, section 10 provides for the determination of price by a third party.
- Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
- In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.
- However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

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

11. By virtue of provisions of Section 29 of the Sale of Goods Act, 1930, a buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale. In the instant case, Saurabh purchased electric scooter of Vivek for ₹ 5000 only by applying coercion. Before Vivek avoid the contract, Saurabh sold the scooter to Vinay who was an innocent buyer. Now, Vivek sued Saurabh and Vinay for recovery of scooter.

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

12. **(i) Section 64 of the Sale of Goods Act, 1930 provides the following rules to regulate the sale by auction:**

(A) *Bid with notification: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction. Bid by seller without notification: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.*

(B) *Bidder to retract from his bid: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.*

(C) *Effect of pretending bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.*

(ii) Delivery of wrong quantity [Section 37 of the Sale of Goods Act, 1930]: *Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)] Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]*

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

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

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

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

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

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

Basis of difference	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that	Co-ownership does not necessarily involve sharing

	profits and losses must have to be shared.	of profits and losses.
4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

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

Yes, it is a case of partnership

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

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

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

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

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

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

(a) The firm's name

(b) The place or principal place of business of the firm,

(c) The names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

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

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

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

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

Registration (Section 59): When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

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

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

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

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

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

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]: It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

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

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

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

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

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

1. **''Equity share capital'',** with reference to any company limited by shares, means all share capital which is not preference share capital; Equity share capital— can be
   (i) with voting rights; or
   (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;
2. **''Preference share capital'',** with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

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

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

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

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

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

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

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

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

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

22. As per Section 76 of the Negotiable Instruments Act, 1881:

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

(a) (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

(ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

(iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

(iv) if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

- he makes a part payment on account of the amount due on the instrument,
- or promises to pay the amount due thereon in whole or in part,
- or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

JANUARY 2025

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

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

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

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

   Mr. Sohan objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

   Now you decide:

   (i) Whether the contention of Mr. Mukesh correct or otherwise as per the provisions of the Indian Contract Act, 1872?

   (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

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

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

Laptops for ₹ 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

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

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

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

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

She will be a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

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

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

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

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

   a. 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.

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

   c. X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

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

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

8. What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872?

   (A) Agreement made based on natural love and affection

   (B) Promise to pay time-barred debts

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

10. What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act.

11. Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

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

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

12. J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.

    The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

    Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930.

13. Mrs. Kanchan went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Kanchan insisted that she would like to see the sample of what would be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.

Mrs. Kanchan examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

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

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

14. Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

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

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

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

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

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

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

19. A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.

    (i) Body Corporate

    (ii) Mutual Agency

    (iii) Foreign LLPs

    (iv) Artificial legal person

20. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?

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

22. XYZ is a company incorporated under the Companies Act, 2013.

The paid up share capital of the company is held by others as on 31.03.2024 in as under:

(1) Government of India	20%
(2) Life Insurance Corporation of India (Public Institution)	8%
(3) Government of Tamil Nadu	10%
(4) Government of Rajasthan	10%
(5) ABC Limited (owned by Government Company)	15%

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

23. Mr. Y issued a cheque for ₹ 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

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

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

24. Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company.

ANSWERS

1. **(i) Supreme Court**

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

(ii) High Court

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

2. **Appropriation of Payments:** In case where a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

(i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Therefore, the contention of Mr. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.

(ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

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

(iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

Hence in case where neither Mr. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

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

In the instant case,

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

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

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

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

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

In the light of the above provisions, the manager must return the wallet to Rohan, since Rohan is entitled to retain the wallet found against everybody except the true owner.

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

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

(ii) **Minor cannot bind parent or guardian:** In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for

necessaries. The parents will be held liable only when the child is acting as an agent for parents.

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

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

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

6. (i) The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court (Section 28 of the Indian Contract Act, 1872). A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement, suit may be filed in one of the courts having jurisdiction.

(ii) The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent, and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

(iii) The said agreement is valid.

Reason: An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void (Section 27). But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

7. As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default.

In this case, S has given a guarantee for P's payment obligation towards R. When P defaulted after making four monthly instalments and became insolvent, S's liability as a guarantor will come into existence.

According to Section 128 of the Act, the liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of ₹ 30,000 to R. [54,000-(4 x 6,000)]

In the second situation, R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here R misrepresented the filter type and both P and S were unaware of this fact. The creditor (R) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from S will be considered to be invalid.

Consequently, S cannot be held liable to pay the balance price of the water purifier to R.

8. (A) **Agreement made based on natural love and affection:** Conditions to be fulfilled under section 25(1) of the Indian Contract Act, 1872

(i) It must be made out of natural love and affection between the parties.

(ii) Parties must stand in near relationship to each other.

(iii) It must be in writing.

(iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

(B) **Promise to pay time barred debts:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

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

(ii) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

10. (i) **Sale by sample [Section 17 of the Sale of Goods Act, 1930]:** In a contract of sale by sample, there is an implied condition that

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

(c) the goods shall be free from any defect rendering them un- merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be

discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

(ii) The following are the implied warranties operative under the Act:

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

   Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

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

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

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

12. According to Section 24 of the Sale of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

In the given case, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags, the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100.

A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

13. (i) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Kanchan will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) In case Mrs. Kanchan specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

14. Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):
Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods.

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

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

(ii) **Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932):** According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

(iii) **Goodwill:** The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

16. Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

17. Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):
(i) The insolvent partner cannot be continued as a partner.
(ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.

(iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

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

(v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

18. Partner by holding out (Section 28 of the Indian Partnership Act, 1932):
Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

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

However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.
Hence Gopal is liable to Sundar and not to Madhav for the liability of the Firm.

19. **Body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

20. (i) Section 2(87) of the Companies Act, 2013 defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

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

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

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.

(ii) In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

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

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

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

22. Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not less than 51% of the paid-up share capital is held by:

- The Central Government, or
- Any State Government or Governments, or
- Partly by the Central Government and partly by one or more State Governments,

And includes a company which is a subsidiary company of such a Government company.

In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%

The holding of the Life Insurance Corporation of India i·e· 8% and ABC Limited i·e· 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%·

Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013·

23· Dishonour of Cheque for Insufficiency, Etc·, of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

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

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

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

In the instant case,

(i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs· 20,000, or with both·

(ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

24. **As per section 11 of the Negotiable Instruments Act, 1881, a** promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

SEPTEMBER 2024

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

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

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

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

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

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

4. Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to Mr. Shyam, to apply for voluntary retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ` 10 Lakhs as consideration to Mr. Shyam to induce him to retire.

   Mr. Shyam refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

   Whether the above agreement is valid? Explain with reference to provision of the Indian Contract Act, 1872?

5. What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:
   (a) Sunil promised to bring back Jatin to life again.
   (b) Aman agreed to sell 50 kgs of apples to Raman. The loaded truck left for delivery on 15th March but due to riots in between reached Raman on 19th March due to which the apples were rotten.
   (c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.
   (d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.

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

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

8. 'Sooraj' guarantees 'Vikas' for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March 2023. 'Vikas' supplied goods of ₹ 30,000 on 01.03.2023 and of ₹ 20,000 on 03.03.2023 to 'Nikhil'. On 05.03.2023, 'Sooraj' died in a road accident. On 10.03.2023, being ignorant of the death of 'Sooraj', 'Vikas' further supplied goods of ₹ 40,000. On default in payment by 'Nikhil' on due date, 'Vikas' sued legal heirs of 'Sooraj' for recovery of ₹ 90,000. Describe, whether legal heirs of 'Sooraj' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act, 1872.
   What would be your answer, if the estate of 'Sooraj' is worth ₹ 45,000 only?

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

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

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

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

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

Mrs. Reema, a customer, came to the shop and asked for a specific type of cloth suitable for making a suit for her daughter's birthday. She specifically mentioned that she required cotton silk cloth which is best suited for the purpose.

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

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

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

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

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

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

13. Akash purchased 100 Kgs of wheat from Bhaskar at ₹ 80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930.

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

Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th

July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm?

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

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

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

(iii) A and B, co-owners, agree to conduct the business in common for profit.

(iv) Some individuals form an association to which each individual contributes ` 5000 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.

(v) A and B, co-owners share between themselves the rent derived from a piece of land.

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

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

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

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

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

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

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

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

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

ANSWERS

1. What is Law?

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

The Process of Making a Law

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

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

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

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

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

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

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

2. (i) It is a void contract.

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

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

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

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

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

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

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

4. Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void.

The given problem talks about entering into an agreement for sale of public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

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

Here, Mr. Shyam's promise to sale for Mr. Dev, an employment in the public services is the consideration for Mr. Dev's promise to pay ₹ 10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

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

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

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

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

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

Therefore, when a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

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

7. Under following circumstances, the contracts need not be performed with the consent of both the parties:

(i) **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)

(ii) **Rescission:** A contract is also discharged by recission· When the parties to a contract agree to rescind it, the contract need not be performed· (Section 62)

(iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed· In other words, a contract is also discharged by alteration· (Section 62)

(iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit· In other words, a contract is discharged by remission· (Section 63)

(v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor·

(vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby· (Section 67)

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

In this question, 'Sooraj' was surety for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March, 2023· 'Vikas' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01·03·2023, 03·03·2023 and 10·03·02023 respectively· 'Sooraj' died in a road accident, but this was not in the knowledge of 'Vikas'· When 'Nikhil' defaulted on payment, 'Vikas' filed suit against legal heirs of 'Sooraj' for recovery of full amount i·e· ₹ 90,000·

On the basis of above, it can be said in case of death of surety ('Sooraj'), his legal heirs are liable only for those transactions which were entered before 05·03·2023 i·e· for ₹ 50,000· They are not liable for the transaction done on 10·03·2023 even though Vikas had no knowledge of death of Sooraj·

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

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

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

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

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

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

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

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

(i) Fitness as to quality or use

(ii) Goods purchased under patent or brand name

(iii) Goods sold by description

(iv) Goods of Merchantable Quality

(v) Sale by sample

(vi) Goods by sample as well as description

(vii) Trade usage

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

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

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

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

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

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

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

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

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

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

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

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

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

(1) Interest on the remaining amount

(2) Interest during the pendency of the suit.

(3) Costs of the proceedings.

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

(i) Actual delivery,

(ii) Constructive delivery and

(iii) Symbolic delivery.

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to the seller acknowledges to the buyer that he is holding the goods on buyer's behalf. On the basis of the above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Akash is not right. He cannot claim the price back.

14. According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

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

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

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

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

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

16. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes in capacitated from acting as a partner due to death,

insolvency or insanity, the partnership, i·e·, the relationship between such a partner and other is dissolved, but the rest may decide to continue· In such cases, there is in practice, no dissolution of the firm· The particular partner goes out, but the remaining partners carry on the business of the Firm· In the case of dissolution of the firm, on the other hand, the whole firm is dissolved·

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

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

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

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

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

(iv) insolvency of a partner·

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

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

17· Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

(i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received·

(ii) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

(iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

(iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ` 500 for each day during which the default continues, subject to a maximum of ` 50,000 for the LLP and its every partner.

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

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

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

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

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

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

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

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

Hence, HP Polytech Limited is a government company.

20. Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he

will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

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

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

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

Essential Characteristics of Negotiable Instruments

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

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

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

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

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

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

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

MAY 2024

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

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

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

4. Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ₹ 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:
   (i) Does the hotel have the right to end the contract?
   (ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?
   (iii) In which of the case - (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach?

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

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

   (ii) Seizure of goods by customs authorities.

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

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

   (ii) Mr. Sooraj promises Mr. Manoj to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation? Decide as per the provisions of the Indian Contract Act, 1872.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued

that the contract was entered into between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

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

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

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

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

ANSWERS

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

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

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

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

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

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

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

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

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

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

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

(a) To terminate the contract

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

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

In the given case,

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

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

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

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

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

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

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

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

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

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

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

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

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

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the

parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

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

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

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

   1. It does not arise from any agreement of the parties concerned but is imposed by law.
   2. Duty and not promise is the basis of such contract.
   3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
   4. Such a right is available against specific person(s) and not against the whole world.
   5. A suit for its breach may be filed in the same way as in case of a complete contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) where the buyer becomes insolvent.

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

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

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

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

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

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

1. There must be an agreement between all the persons concerned;
2. The agreement must be to carry on some business;

3. The agreement must be to share the profits of a business and

4. The business was carried on by all or any of them acting for all.

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

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

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

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

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

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

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

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

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

The rights of such a transferee are as follows:

(1) During the continuance of partnership, such transferee is not entitled
   (a) to interfere with the conduct of the business,
   (b) to require accounts, or
   (c) to inspect books of the firm.

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

(2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
   (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
   (b) for the purpose of ascertaining the share,
   he is entitled to an account as from the date of the dissolution.

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

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

	Basis	LLP	Partnership firm
1.	**Regulating Act**	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	**Body corporate**	It is a body corporate.	It is not a body corporate.
3.	**Separate legal entity**	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	**Creation**	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	**Registration**	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	**Perpetual succession**	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	**Name**	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	**Liability**	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.

9.	**Mutual agency**	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	**Designated partners**	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	**Common seal**	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	**Legal compliances**	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	**Annual filing of documents**	LLP is required to file: (i) Annual 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.
14.	**Foreign partnership**	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
17.	**Minor as partner**	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

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

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

20. This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

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

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

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

(ii) Remedy available to BK Finance Limited:

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

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

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

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

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

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

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

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

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

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

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

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

FOUNDATION LAW –MTPS

JANUARY 2025 PART- I

1. (a) 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)**

(b) 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)**

(c) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

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

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

2. (a) (i) 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)**

(ii) Akash of Jaipur sold 100 smart TV set @ ₹ 50,000/- per set to Barun of Delhi. He delivered the TV sets to Chirag, a transport carrier for transmission to Barun. Barun further sold these 100 TV sets to Sarthak @ ₹ 60,000/- per set. On reaching the goods at the destination, Barun demanded the delivery but Chirag, wrongfully, refused to deliver the goods to Barun. That is why; he failed to deliver TV sets to Sarthak and suffered a huge loss on account of non-delivery. Akash came to know about this. He directed Chirag to stop the delivery to Barun and re-deliver the goods to him at Jaipur.
Answer the following questions under the provisions of the Sale of Goods Act, 1930: **(3 Marks)**

(A) Whether Akash has the right to stop the goods in transit?
(B) Whether Barun can claim loss suffered due to non-delivery from Akash?

(b) Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company? **(7 Marks)**

(c) Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. **(4 Marks)**

(ii) What do you mean by a Small Limited Liability Partnership? **(2 Marks)**

3. (a) Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

(i) Ram and Shyam are partners in a partnership firm named as RS & Co. (the firm). Gaurav, a renowned businessman, is their common friend. Ram introduced Gaurav to Sahil, a supplier to the firm, as his newly joined partner. Gaurav knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gaurav, being a partner of the firm, was shared by Sahil with another businessman Madhav. Next day, Sahil supplied the raw material on credit and Madhav lent ` 5 lakhs to the firm for a short period on the understanding that Gaurav is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Advise Gaurav, whether he is liable to Sahil and Madhav for the aforesaid liability of the firm. **(4 Marks)**

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

(b) (i) MN Limited borrowed a secured loan of ₹ 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ₹ 1 crore. The bank released the loan amount in two

instalments of ₹ 1 crore and ₹ 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ₹ 5 crore on the ground that the borrowing was ultra vires the company. The company's books of accounts show that the company has utilized the loan amount of ₹ 3 crore for repayment of its lawful debts. The utilization of the remaining ₹ 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan. **(4 Marks)**

(ii) After incorporation of Unique Private Limited (the company) on 15th May, 2024 the share certificates were issued to Arnav, Sohail and Suman being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Arnav and Sohail, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Suman, a director, about the validity of the share certificate signed by other two directors, Arnav and Sohail, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.

Would your answer be different, if the company had a company secretary? **(3 Marks)**

(c) 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)**

4. (a) (i) 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)**

(ii) X agrees to pay Y ₹ 1,00,000, if Y kills Z. To pay Y, X borrows ₹ 1,00,000 from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

(A) Between X and Y

(B) Between X and W **(3 Marks)**

(b) 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 Instrument Act, 1881? **(7 Marks)**

(c) What do you understand by Law? Also, elaborate the procedure for making a law. **(6 Marks)**

5. (a) (i) Karan agreed to sell his laptop to Vishal for a price to be fixed by Kiran a hardware engineer. However, before the delivery of the laptop, Karan changed his mind and did not share any particulars and configuration of the laptop with Kiran, which made her unable to do the valuation. Kiran refused to do valuation.

Vishal needed laptop for his project, so he promised Karan that, if the laptop is delivered to him, he would pay a reasonable price for it However, Karan decided not to sell his laptop to Vishal. Now, Vishal wants to know from you, being a legal expert, whether Karan is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vishal? Advise, referring to the provisions of the Sale of Goods Act, 1930. **(3 Marks)**

(ii) 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? 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 requirement as to the length of rice? **(4 Marks)**

(b) "Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India? **(7 Marks)**

(c) (i) In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of the Indian Contract Act, 1872. **(3 Marks)**

(ii) What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872?

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts **(3 Marks)**

6. (a) Mr. Y issued a cheque for ₹ 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

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

(ii) What would be your answer if Y issued a cheque as a donation to Mr. Z? **(7 Marks)**

(b) Explain the term 'Quasi Contracts' and state their characteristics. **(6 Marks)**

(c) Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. **(7 Marks)**

ANSWERS

1. **(a)** 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-(4x6,000)]

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.

Here Rahul misrepresented the filter type and both Pankaj and Sooraj were unaware of this fact. The creditor (Rahul) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from Sooraj will be considered to be invalid.

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

(b) *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.

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

According to Section 33 of the Indian Partnership Act, 1932

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

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

(iii) it has been exercised in good faith.

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

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

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

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

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

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

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

According to Section 32(3) of the Indian Partnership Act, 1932, notwithstanding the expulsion a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion, until public notice is given of the expulsion.

However, an expelled partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Hence, the statement given is partially correct.

2. (a) (i) 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.

(ii) According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chirag wrongfully refused to deliver the goods to Barun, and he suffered a huge loss due to non- delivery. Hence, Akash cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Barun can claim loss suffered due to non-delivery from Akash.

(b) Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) - salient features

- *Only one person as member.*
- *Minimum paid up capital - no limit prescribed.*
- *The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.*
- *The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.*
- *Such other person may be given the right to withdraw his consent.*
- *The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.*
- *Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.*
- *Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.*
  - *shall be eligible to incorporate an OPC;*
  - *shall be a nominee for the sole member of an OPC.*
- *No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.*
- *No minor shall become member or nominee of the OPC or can hold share with beneficial interest.*
- *Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.*
- *Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.*

- If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Here the member can be the sole member-cum-director.

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

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

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

(3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall

enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) **Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]:** It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

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

3. (a) (i) Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

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

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

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

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

But a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

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

(b) (i) **Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that 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.

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.

In the instant case, borrowing more than ₹ 1 crore was clearly beyond MN Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹ 1 crore.

Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ₹ 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), 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.

Therefore, MN Limited cannot deny repayment of ₹ 3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.

Ultimately, the company has no remedy available to recover the balance amount of loan of ₹ 1 crore as the spending thereof is not traceable.

(ii) The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

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

In the instant case, the objection of Suman is not valid as the share certificate was signed by two directors Arnav and Sohail as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

(c) **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

(i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.

(ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.

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

(iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

4. (a) (i) 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.

(ii) **Illegal Agreement:** It is an agreement which the law forbids to be made. As an essential condition, lawful consideration and object is a must to make the agreement valid. (Section 10 of the Indian Contract Act, 1872). As per Section 23, an agreement is illegal and void, if the consideration and object is unlawful/contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

(A) X agrees to give ₹ 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.

(B) X borrows ₹ 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

(b) **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.

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

The Process of Making a Law

- When a law is proposed in parliament, it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

5. (a) (i) Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. 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.

2. 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.

In the instant case, as Kiran cannot do valuation of laptop due to non-sharing of particulars and configuration by Karan who was bound by his promise, the agreement will be void.

The other remedy available to Vishal is that he can claim damages from Karan as he will be liable for the damages to Vishal who is not at fault.

(ii) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Meenu will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(i) In the instant case, Mrs. Meenu does not have any option available to her for grievance redressal.

(ii) 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.

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

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

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

(i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

(ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

(c) (i) **Ordinary damages:** 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 cause to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

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 calculation and the necessity to convince outside parties.

(ii) (A) **Agreement made based on natural love and affection:** Conditions to be fulfilled under section 25(1) of the Indian Contract Act, 1872

(i) It must be made out of natural love and affection between the parties.
(ii) Parties must stand in near relationship to each other.
(iii) It must be in writing.
(iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

(B) **Promise to pay time barred debts:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

6. (a) 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,

(i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence & shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ₹ 20,000, or with both.

(ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

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

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

(c) **The main points of distinction between the 'Sale' and 'Hire- Purchase' are as follows:**

Sr. No.	Basis of difference	Sale	Hire-Purchase
1	Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
2	Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.
3	Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.

4	Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
5	Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
6	Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

1. (a) (i) Mr. A was running an orphanage. His friend Mr. S, a philanthropist agreed to donate ₹ 2 lakh for treatment of a child, who was suffering from cancer. On emergency, Mr. A incurred ₹ 1.5 lakh on treatment of child. Now, Mr. S refused to pay. Whether Mr. A can claim ₹ 1.5 lakh from Mr. S with reference to provisions of the Indian Contract Act, 1872? **(3 Marks)**

(ii) 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)**

(b) (i) 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)**

(ii) Mike LLC incorporated in Singapore having an office in Pune, India. Analyze whether Mike LLC would be called a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company. **(3 Marks)**

(c) 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)**

2. (a) Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two- wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain-

(i) Can Priya take-back the vehicle from Sony?

(ii) Will your answer be different, if Priya had not handed over the vehicle to Sony? **(7 Marks)**

(b) Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? **(7 Marks)**

(c) A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.

(i) Body Corporate

(ii) Mutual Agency

(iii) Foreign LLPs

(iv) Artificial legal person **(6 Marks)**

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

(ii) A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. 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)**

(b) (i) 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%
(3) Government of Tamil Nadu	10%
(4) Government of Rajasthan	10%
(5) ABC Limited (owned by Government Company)	15%

As per above shareholding, state whether XYZ limited be called a Government Company under the provisions of the Companies Act, 2013. **(4 Marks)**

(ii) M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died? **(3 Marks)**

(c) 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? **(6 Marks)**

4. (a) (i) Mr. J entered into an agreement with Mr. S to purchase his house for ₹ 20 lakh, within three months. He also paid ₹ 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid. **(4 Marks)**

(ii) 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? **(3 Marks)**

(b) What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881? **(7 Marks)**

(c) Describe in brief about the following Regulatory bodies of the Government of India:

(i) Securities and Exchange Board of India

(ii) Reserve Bank of India

(iii) Insolvency and Bankruptcy Board of India **(6 Marks)**

5. (a) (i) Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(4 Marks)**

(ii) Classify the following transactions according to the types of goods they are:

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

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

(C) T agrees to sell to S all the apples which will be produced in his garden this year. **(3 Marks)**

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

(c) In accordance with the provisions of the Indian Contract Act, 1872, answer the following:

(i) Rights of Bailor against any wrong doer (Third Party)

(ii) Duties of the Pawnee **(6 Marks)**

6. (a) Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario:

(i) Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties. **(4 Marks)**

(ii) Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company. **(3 Marks)**

(b) Answer the following as per the provisions of the Indian Contract Act, 1872:

(i) 'Agent cannot personally enforce, nor be personally bound by, contracts on behalf of the principal' however there are some exceptions to this general rule, explain. **(4 Marks)**

(ii) State the rights of Indemnity-holder when sued. **(2 Marks)**

OR

(b) What is the meaning of contingent contract? Write briefly its essentials. Also, explain any three rules relating to enforcement of a contingent contract. **(6 Marks)**

(c) J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.

The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930, **(7 Marks)**

ANSWERS

1. (a) (i) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872).

However, in the following case, the agreement though made without consideration, will be valid and enforceable.

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

(ii) 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.

(b) (i) 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.

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

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

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

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

(c) 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.

2. (a) Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

(1) fixed by the contract, or

(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or

(3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided. However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.

2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

(i) In the instant case, Priya handed over the keys of her two- wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.

(ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

(b) **One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]:** The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e- articles.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.

- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year-
  - shall be eligible to incorporate a OPC;
  - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

(c) **Body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

3. (a)

(i) Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

(ii) According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.

As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:

(a) in the ordinary course of the business of the firm, or

(b) with the authority of the partners.

Section 27 provides that the firm is liable if a partner, acting within the scope of his apparent authority, receives money or property from a third party and misapplies it, or if the firm in the course of its business receives money or property and the same is misapplied while it is in the custody of the firm.

In the instant case, both A and B are liable to C for the wrongful acts committed by B. A cannot avoid liability merely on the grounds of being a sleeping partner.

(b) (i) 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.

(ii) **One of the features of a company is that it has perpetual succession.** As per this feature, members may die or change, but the company goes on

till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not affected, since the shares held by M and N will be legally transmitted to their legal heirs.

(c) In terms of the provisions of the Indian Contract Act, 1872, the surety enjoys the following rights:

(a) Rights against the creditor;

(b) Rights against the principal debtor;

(c) Rights against co-sureties.

(d) Right against the Creditor

(a) Surety's right to benefit of creditor's securities [Section 141]: A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

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

(c) Right to share reduction: The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

(a) **Rights of subrogation [Section 140 of the Indian Contract Act, 1872]:** Where, a guaranteed debt has become due, or default of the principal

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

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

(b) **Implied promise to indemnify surety [Section 145]:** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

Rights against co-sureties

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

(a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

(b) **Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

4. (a) (i) According to section 56 of the Indian Contract Act, 1872, an agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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.

In the instant case, Mr. J entered into a contract with Mr. S to purchase his house for ₹ 20 lakh, with a token payment of ₹ 50,000. The agreement included a condition that the sale would be completed within three months. Before the completion of the sale, the house was demolished by the local administration. This event made it impossible for Mr. S to sell the house to Mr. J as agreed.

In this situation, Mr. J is required to refund ₹ 50,000 token money paid to Mr. S, as the contract to sell the house has become void due to the demolition of the house by the local administration, as a result of which it becomes impossible to sell the house on the part of S.

(ii) **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.

(b) **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.

(c) (i) The Securities and Exchange Board of India (SEBI):

- It 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.

(ii) Reserve Bank of India (RBI):

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.

- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(iii) Insolvency and Bankruptcy Board of India (IBBI)-

- It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

5. (a) (i) **Right of stoppage of goods in transit:** The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

(A) The seller must be unpaid

(B) He must have parted with the possession of goods

(C) The goods must be in transit

(D) The buyer must have become insolvent

(E) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

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

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

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

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

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

(a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

(b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as

partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

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

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

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

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

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

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

(i) Deadlock in the management.

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

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

(c) (i) **Suit by bailor & bailee against wrong doers [Section 180 of the Indian Contract Act, 1872]:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

(ii) Duties of the Pawnee

Pawnee has the following duties:

a. Duty to take reasonable care of the pledged goods.
b. Duty not to make unauthorized use of pledged goods.
c. Duty to return the goods when the debt has been repaid or the promise has been performed.
d. Duty not to mix his own goods with goods pledged.
e. Duty not to do any act which is inconsistent with the terms of the pledge.
f. Duty to return accretion to the goods, if any.

6. (a) (i) Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable. Delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The

rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57).

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid.

Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

(ii) **As per section 11 of the Negotiable Instruments Act, 1881, a** promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

(b) (i) Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

(1) **Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal: -** When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.

(2) **Where the agent does not disclose the name of his principal or undisclosed principal;** (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.

(3) **Non-existent or incompetent principal:** Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.

(4) **Pretended agent** – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.

(5) **When agent exceeds authority**- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

(ii) **Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872):** The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

(a) all damages which he may be compelled to pay in any suit

(b) all costs which he may have been compelled to pay in bringing/ defending the suit and

(c) all sums which he may have paid under the terms of any compromise of suit.

OR

(b) **Essentials of a Contingent Contract**

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872)

"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".

Rules Relating to Enforcement of a contingent contract:

The rules relating to enforcement of a contingent contract are laid down in ***sections 32, 33, 34, 35 and 36 of the Act.***

(a) ***Enforcement of contracts contingent on an event happening:*** *Section 32 says that "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void".*

(b) ***Enforcement of contracts contingent on an event not happening:*** *Section 33 says that "Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before".*

(c) *A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.*

Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies".

(d) ***Contingent on happening of specified event within the fixed time:*** *Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.*

(e) ***Contingent on specified event not happening within fixed time:*** *Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".*

(f) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

(c) According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-

(i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

In the given case, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags, the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100. A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

SEPTEMBER 2024 PART- I (MTP)

1. (a) (i) Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872? **(4 Marks)**

(ii) Sahil sells by auction to Rohan a horse which Sahil knows to be unsound. The horse appears to be sound, but Sahil knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

(A) If Sahil says nothing about the unsoundness of the horse to Rohan.

(B) If Sahil says nothing about it to Rohan who is Sahil's son.

(C) If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound." Sahil says nothing. **(3 Marks)**

(b) (i) ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ₹ 100 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? **(4 Marks)**

(ii) MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31s July 2024. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail. **(3 Marks)**

(c) (i) What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932? **(4 Marks)**

(ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? **(2 Marks)**

2. (a) Mr. Manoj was running a shop selling good quality washing machines. Mr. Vivek came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Manoj showed him a particular machine which Mr. Vivek liked and paid for it. Later on, when the machine was delivered to Mr. Vivek's house, it was found that it was the wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Manoj about the delivery of the wrong machine. Mr. Manoj refused to exchange the same, saying that the contract was complete after the delivery of the washing machine and payment of price. With reference to the provisions of the Sale of Goods Act, 1930, discuss whether Mr. Manoj is right in refusing to exchange the washing machine. **(7 Marks)**

(b) (i) Mr. Sooraj sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sooraj filed the claim for such loss with the Insurance Company. State with reasons that whether the insurance company is liable to pay the claim? **(4 Marks)**

(ii) Alfa school is a section 8 company which started imparting education on 1.4.2015, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? **(3 Marks)**

(c) What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? **(6 Marks)**

3. (a) M/s ABC & Associates, a partnership firm with A, B and C as senior partners engaged in the business of curtain manufacturing and exporting to foreign countries. On 25th August, 2022, they inducted Mr. P, an expert in the field of curtain manufacturing as their partner. On 10th January 2024, Mr. P was blamed for unauthorized activities and thus expelled from the partnership by approval of all of the remaining 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? **(7 Marks)**

(b) (i) Powertech Limited was registered as a public company. There are 230 members in the company as noted below:

(a) Directors and their relatives	190
(b) Employees	15
(c) Ex-Employees (Shares were allotted when they were employees)	10
(d) 5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e) Others	5

The Board of Directors of Powertech Limited proposes to convert it into a private company. Also advise whether a reduction in the number of members is necessary. **(4 Marks)**

(ii) Popular Products Ltd. is company incorporated in India, having a total Share Capital of ₹ 20 Crores. The Share capital comprises of 20 Lakh equity 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 the above

three companies namely Delight Products Ltd.; Happy Products Ltd. and Cheerful Products Ltd. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd.

State the related provision in favour of your answer, if Jovial Ltd. controls the composition of directors of Popular Products Ltd. **(3 Marks)**

(c) Who is considered as an agent under the Indian Contract Act, 1872, and what are the duties and obligations associated with this role? **(6 Marks)**

4. (a) (i) Mr. Om Kashyap was a big businessman of Pune City having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident, and both of them died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? **(4 Marks)**

(ii) Due to urgent need of money amounting to ₹ 3,00,000, Pawan approached Raman and asked him for the money. Raman lent the money on the guarantee of Suraj and Tarun. Pawan makes default in payment and Suraj pays full amount to Raman. Suraj, afterwards, claimed contribution from Tarun but Tarun refused to contribute on the basis that there is no contract between Suraj and him. Examine referring to the provisions of the Indian Contract Act, 1872, whether Tarun can escape from his liability. **(3 Marks)**

(b) State the Difference between promissory note and bill of exchange." **(7 Marks)**

(c) What do you understand by Law? Also, elaborate the procedure for making a law. **(6 Marks)**

5. (a) Simran went to a Jewellery shop and asked the salesgirl 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. Simran 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 Jeweller to give her money back, but he refused for the same. Answer the following questions as per the Sale of Goods Act, 1930.

(i) State with reasons whether Simran 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? **(7 Marks)**

(b) (i) 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)**

(ii) State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:

(A) When he opts to become a partner of the same firm.

(B) When he decides not to become a partner. **(3 Marks)**

(c) How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end? **(6 Marks)**

6. (a) (i) M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. **(4 Marks)**

(ii) Rama executes a promissory note in the following form, 'I promise to pay a sum of ₹ 10,000 after three months'. Decide whether the promissory note is a valid promissory note. **(3 Marks)**

(b) What constitutes a contingent contract under the Indian Contract Act, 1872, and what are its essential elements? **(6 Marks)**

(c) Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale under the Sale of Goods Act, 1930. **(7 Marks)**

ANSWERS

1. (a) (i) Section 73 of Indian Contract Act, 1872 provides that 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. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

(ii) According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

(A) This contract is valid since as per section 17, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.

(B) This contract is not valid since as per section 17, it becomes Sahil's duty to tell Rohan about the unsoundness of the horse because a fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud.

(C) This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud.

(b) (i) 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 voting power, or control of or participation in business decisions under an agreement.

In the given case, 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.

(ii) **"Inactive company"** means a company which has not been carrying on any business or operation or has not made any **significant accounting transaction** during the last two financial years or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]

"Significant accounting transaction" means any transaction other than—

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

(d) payments for maintenance of its office and records.

[Explanation (ii) to Section 455 of the Companies Act, 2013]

In the instant case, MTK Private Limited was registered on 5th January 2022 and did not start its business till 31st July 2024. Since the Company has not started its business and a period of more than two years has already elapsed, it will be treated as an inactive company.

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

Basis of difference	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

(a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

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

2. (a) According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to a sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Vivek informed Mr. Manoj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Manoj was unfit for the purpose for which Mr. Vivek wanted the machine.

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vivek can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Manoj to replace the washing machine with desired one.

(b) (i) According to the decision taken in the case of *Salomon Vs. Salomon & Co. Ltd.*, a company has a separate legal entity. A company is different from its members. Further, according to the decision taken in the case of *Macaura Vs. Northern Assurance Co. Ltd.*, a member or creditor does not have any insurable interest in the property of the company. Members or creditors of the company cannot claim ownership in the property of company.

On the basis of the above provisions and facts, it can be said that Mr. Sooraj and CPL Private Limited are separate entities. Mr. Sooraj cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sooraj for the claim for the loss of stock by fire.

(ii) Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce,

art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

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

(ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

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

(c) **Designated Partner [Section 2(1)(j) of the LLP Act, 2008]:** "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 financial year.

3. (a) 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.

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

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

- the power of expulsion must have existed in a contract between the partners;

- the power has been exercised by a majority of the partners; and
- it has been exercised in good faith.

(b) (i) According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, 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.

It is further provided 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.

In the instant case, Powertech Limited may be converted into a private company only if the total members of the company are limited to 200.
Total Number of members

(i)	Directors and their relatives	190
(ii)	5 Couples (5*1)	5
(iii)	Others	5
	Total	**200**

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

(ii) According to Section 2(87) of the Companies Act, 2013 "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 present case, the total share capital of Popular Products Ltd. is ₹ 20 crores comprised of 20 Lakh equity 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 voting power. 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.

(c) The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

Agent means a person employed to do any act for another or to represent another in dealing with the third persons and

The principal means a person for whom such act is done or who is so represented.

Duties and obligations of an Agent

(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 remotely 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. *(Anandprasad vs. Dwarkanath)*

(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 communicating with his principal, and in seeking to obtain his instructions.

(v) **Duty not to deal on his own account:** Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—

a. repudiate the transaction, (Section 215)

b. claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)

(vi) **Duty not to make secret profits:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.

(vii) **Duty not to delegate:** According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub- agent, must be employed.

(viii) **Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

(ix) Duty not to use any confidential information received in the course of agency against the principal.

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

In the instant case, the transfer of house made by Mr. Om Kashyap on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable.

(ii) Equality of burden is the basis of Co-suretyship. This is contained in section 146 of the Indian Contract Act, 1872, which states that "unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

Accordingly, on the default of Pawan in payment, Tarun cannot escape from his liability. Both the sureties Suraj and Tarun are liable to pay equally, in absence of any contract between them.

(b) **Difference between promissory note and bill of exchange:**

S. No.	Basis	Promissory Note	Bill of Exchange
1.	**Definition**	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note)	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker,

		containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
2.	**Nature of Instrument**	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	**Parties**	In a promissory note, there are only 2 parties namely: the maker and the payee	In a bill of exchange, there are 3 parties which are as under: the drawer the drawee the payee
4.	**Acceptance**	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
5.	**Payable to bearer**	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

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

The Process of Making a Law

- When a law is proposed in parliament it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.

- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

5. (a) 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 Simran and Jeweller and not a sale. Even though the payment was made by Simran, 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, Simran 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 Simran. Even though he has to bear some expenses for repair; he cannot charge it from Simran.

(b) (i) **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.

(ii) (A) **When he becomes partner:** If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(B) When he elects not to become a partner:

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

(c) A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

(i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

(1) Actual performance; or

(2) Attempted performance

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

(ii) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.

(iii) **Discharge by impossibility of performance:** The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:

(a) an unforeseen change in law;

(b) the destruction of the subject-matter essential to that performance;

(c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;

(d) the declaration of a war (Section 56).

(iv) **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

(v) **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

(vi) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

(vii) **Promisee may waive or remit performance of promise:** 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 may be discharged by remission. (Section 63)

(viii) **Effects of neglect of promisee to afford promisor reasonable facilities for performance:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

(ix) **Merger of rights:** Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

6. (a) (i) The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is

justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

(ii) The promissory note is an unconditional promise in writing. In the above question, the amount is certain but the date and name of the payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

(b) Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872) "A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".

Contracts of Insurance, indemnity and guarantee fall under this category.

Meaning of collateral Event: Collateral event is "an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise".

Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

(c) If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. **Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

2. **Suit for specific performance (Section 58):** Where the seller commits 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 and where damages would not be an adequate remedy.

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 or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –
   (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
   (ii) sue the seller for damages for breach of warranty.

4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as:
   - subsisting and wait till the date of delivery, or
   - he may treat the contract as rescinded and sue for damages for the breach.

5. **Suit for interest:**
   (1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.
   (2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit 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.

1. (a) (i) Ashok goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of ₹ 40,000 after a discount of ₹ 3000. Ashok reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ₹ 43,000." Ashok got angry and insists for ₹ 40,000. State with reasons whether under Indian Contract Act, 1872, Ashok can enforce the cashier to sell at discounted price i.e. ₹ 40,000. **(4 Marks)**

(ii) 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)**

(b) (i) Mr. Mohan had purchased some goods from Sunflower Limited on credit. A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the Accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Ramesh is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company.

Analyse the situation and decide whether Mr. Mohan is free from his liability. **(4 Marks)**

(ii) Mike Limited is 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? **(3 Marks)**

(c) Whether a minor may be admitted in the business of a partnership firm? Also, explain the rights of a minor in the partnership firm under the Indian Partnership Act, 1932. **(6 Marks)**

2. (a) (i) An auction sale of the certain goods was held on 7th March, 2024 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2024 followed by the delivery of goods on 10th March, 2024. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. **(3 Marks)**

(ii) Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930. **(4 Marks)**

(b) Mr. Rajeev, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Mr. Rajeev as a pretended loan. This way, Mr. Rajeev divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded. **(7 Marks)**

(c) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. **(6 Marks)**

3. (a) 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? **(3 Marks)**

(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? Can paper dealer i.e. third party make Y liable for paper supplied to X? **(2 Marks)**

(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? **(2 Marks)**

(b) The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5 crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013? **(7 Marks)**

(c) "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Also, discuss the effect of anticipatory breach of contracts under the Indian Contract Act, 1872. **(6 Marks)**

4. (a) (i) Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2024, 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, 2024 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, 2024 for which Mr. Vikas did not agree. On 1st August, 2024, 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 for 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)**

(ii) R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidently slips and the umbrella is badly damaged. Who bear the loss and why under the provisions of the Indian Contract Act, 1872? **(3 Marks)**

(b) What is a cheque under the Negotiable Instruments Act, 1881, and who are the parties involved? What are the essential elements of a cheque? **(7 Marks)**

(c) What is the structure of the Indian Judicial System, and what is the hierarchy of courts in India? **(6 Marks)**

5. (a) (i) Avyukt purchased 100 Kgs of wheat from Bhaskar at ₹30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930. **(4 Marks)**

(ii) Classify the following transactions under the Sale of Goods Act, 1930 according to the types of goods they are:

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

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

(C) T agrees to sell to S all the apples which will be produced in his garden this year. **(3 Marks)**

(b) When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. **(7 Marks)**

(c) Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872. **(6 Marks)**

6. (a) (i) 'Nakul' made promissory note in favour of 'Sahdev' of ₹10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881? **(4 Marks)**

(ii) Utkarsh purchased some goods from Saksham for ₹ 50,000 on 14th August. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 pm Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August (3:00 pm). Saksham treated the bill as dishonoured for non-acceptance. Referring the provisions of the Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance? **(3 Marks)**

(b) Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872. **(6 Marks)**

(c) 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. **(7 Marks)**

ANSWERS

1. (a) (i) **An invitation to offer is different from offer**. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Ashok reaches to super market and selects a Air Conditioner with a discounted price tag of ` 40,000 but cashier denied to sell at discounted price by saying that discount is closed from today and request to make full payment. But Ashok insists to purchase at discounted price.

On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashok who is making the offer not the super market. Cashier has right to reject the Ashok's offer. Therefore, Ashok cannot enforce cashier to sell at discounted price.

(ii) **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.

(b) (i) **Doctrine of Indoor Management:** The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive Notice does not mean that outsiders are deemed to have notice

of the internal affairs of the company. For instance, if an act is authorised by the Articles or Memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons.

They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the Articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and he (Mr. Ramesh) gave to receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company. Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company.

(ii) **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 Office was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

(c) A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a

partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights of such a partner will be governed under Section 30 as follows:

Rights:

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

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

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

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

2. (a) (i) According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.

In the given question, the auction sale is completed on 7th March, 2024.

(ii) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In this case, M received the goods by sample from L but since the goods were not according to the sample, M can reject the goods and can sue L.

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

(b) 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 facade 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.

1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

2. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckjee Petit* and *Juggilal vs. Commissioner of Income Tax.*

(c) 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. 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.*

3. (a) *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.*

(i) 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 a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.*

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

(b) According to Section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

(i) the Central Government, or

(ii) by any State Government or Governments, or

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

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

As per Section 2(87) of the Companies Act, 2013, "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, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

(c) 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.

Effect of Anticipatory Breach: The promisee is excused from performance or from further performance. Further he gets an option:

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

(2) 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.

4. (a) (i) **Subsequent or Supervening impossibility (Becomes impossible after entering into contract):** When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. 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.

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 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. Gaurav has to pay back the amount of ₹ 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

(ii) Section 161 of the Indian Contract Act, 1872 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part. Hence, in the instant case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.

(b) CHEQUE [Section 6 of the Negotiable Instruments Act, 1881]

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to Cheque

1. **Drawer:** The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
2. **Drawee:** The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
3. **Payee:** The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

a. all the essential characteristics of a bill of exchange
b. Must be drawn on a specified banker.
c. It must be payable on demand.

(c) When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

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. 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.

(ii) High Court

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

(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.

(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.

5. (a) (i) As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,

(i) Actual delivery,

(ii) Constructive delivery and

(iii) Symbolic delivery

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

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

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

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

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

(b) **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 40 - 44)

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

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

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

(iv) insolvency of a partner.

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

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

(c) Consideration [Section 2(d) of the Indian Contract Act, 1872]

"When at the desire of the promisor, the promise or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

The essential characteristics of a valid consideration are as follows:

(1) Consideration must move at the desire of the promisor.

(2) It may proceed from the promisee or any other person on his behalf.

(3) It may be executed or executory. It may be past, present or future.

(4) It must be real and have some value in the eyes of law.

(5) It must not be something which the promisor is already legally bound to do.

(6) It must not be unlawful, immoral or opposed to public policy.

(7) Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.

6. (a) (i) According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

(ii) According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

In the instant case, Saksham drawn a bill of exchange on Utkarsh and and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance. Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

(b) **Trafficking relating to Public Offices and titles:** An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

(1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present 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.

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.

Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

(c) 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).**

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

(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 from 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. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid **[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)].**

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

(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]

JUNE 2024 PART- I (MTP)

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

(b) The paid-up capital of Darshan Photographs Private Limited is ₹ 1 Crores in the form of 50,000 Equity Shares of ₹ 100 each and 50,000 Preference Shares (not carrying any voting rights) of ₹ 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,

(a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?

(b) Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darshan Photographs Private Limited? **(7 Marks)**

(c) Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. **(6 Marks)**

2. (a) 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. **(7 Marks)**

(b) Explain the 'Doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company? **(7 Marks)**

(c) "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. **(6 Marks)**

3. (a) A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932? **(7 Marks)**

(b) (i) Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was ₹ 1.80 crore and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. **(4 Marks)**

(ii) In the Flower Fans 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 Companies Act, 2013:

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

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

(c) "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. **(6 Marks)**

4. (a) (i) Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872? **(4 Marks)**

(ii) 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 taking into account the provisions of the Indian Contract Act, 1872? **(3 Marks)**

(b) What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881. **(7 Marks)**

(c) Explain in brief the various types of laws in the Indian Legal System. **(6 Marks)**

5. (a) (i) A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? **(4 Marks)**

(ii) AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(3 Marks)**

(b) (i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? **(4 Marks)**

(ii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? **(3 Marks)**

(c) Explain any five circumstances under which contracts need not be performed with the consent of both the parties. **(6 Marks)**

6. (a) Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14th June, 2023. Sumit presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable? **(7 Marks)**

(b) State the essential elements of a contract of bailment. **(6 Marks)**

(c) State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. **(7 Marks)**

ANSWERS

1. (a) According to Section 27 of 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. 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 sold his running business of artificial jewellery to Naman and promises, 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.

As exceptions to section 27 is 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.

(b) According to Section 2(87) of Companies Act, 2013 "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) 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;

(ii) the expression "company" includes any body corporate;

It is to be noted that Preference share capital will also be considered if preference shareholders have same voting rights as equity shareholders.

In the instant case, Darshan Photographs Private Limited is having paid-up capital of ₹ 1 Crores in the form of 50,000 Equity Shares of ₹ 100 each and 50,000 Preference Shares of ₹ 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

(a) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one - half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, Darshan Photographs Private Limited cannot be considered as subsidiary company of Shadow Evening Private Limited as for being subsidiary company other company should control more than one - half of the total voting power.

(b) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

(c) **Definition of Partnership:** '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. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business
4. Agreement to Share Profits
5. Business Carried on by all or any of them acting for all

ELEMENTS OF PARTNERSHIP

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person

recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

2. **Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
3. **Business:** Firstly, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
4. **Agreement to share profits:** 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 element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.
5. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business

is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

2. (a) By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be fixed by the contract, or agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third party in the following manner:

(a) Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.

(b) In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

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

In the instant case, Kapil contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Akhilesh. After, Rahul delivered 600 litres Akhilesh denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil.

On the basis of above provisions and facts, Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

(b) **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 in their nature are 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 [Ashbury Railway Company Ltd. vs. Riche].

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.

Consequences of 'ultra vires' acts of the company:

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 one enters into a transaction which is ultra vires the company, he/she cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.

However, some ultra vires act can be regularised by ratifying them 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, shareholders can validate such acts.

(c) 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. 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.

3. (a) According to Section 13(e) of Indian Partnership Act, 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

In the instant case, M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss.

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

(b) (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, 2023 of Glassware Private Limited, its turnover was to the extent of ₹ 1·80 crore, and paid-up share capital was ₹ 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

(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.

(c) 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, 1872 deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

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

(1) 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

(2) 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.

4. (a) (i) "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of 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 performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

(ii) **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.

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

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

Essential Characteristics of Negotiable Instruments

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

(c) 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.

5. (a) (i) Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of

goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime, B, the buyer has become insolvent.

In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

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

(b) (i) **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.

(ii) **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 house 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.

(c) Under following circumstances, the contracts need not be performed with the consent of both the parties:

(i) **Novation:** Where the parties to a contract substitute a new contract for the old it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)

(ii) **Rescission:** A contract is also discharged by recission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)

(iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)

(iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)

(v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.

(vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

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

However,

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

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

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

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

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 18th July, 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.

(b) **Essential elements of a contract of bailment:** Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is 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 directions of the person delivering them. The essential elements of the contract of the bailment are:

(i) Delivery of goods— The essence of bailment is delivery of goods by one person to another.

(ii) Bailment is a contract— In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.

(iii) Return of goods in specific— The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.

(iv) Ownership of goods— In a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.

(v) Property must be movable—Bailment is only for movable goods and never for immovable goods or money.

(c) **Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930):** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

JUNE 2024 PART- II (MTP)

1. (a) In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y has given loan to Mr. G of ₹ 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable as per the Indian Contract Act, 1872?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? **(7 Marks)**

(b) (i) Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent? **(4 Marks)**

(ii) A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held a general meeting by giving only 14 days' notice. Is this valid? **(3 Marks)**

(c) (i) "Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? **(4 Marks)**

(ii) Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? **(2 Marks)**

2. (a) Mr. G sold some goods to Mr. H for a certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending? **(7 Marks)**

(b) Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? **(7 Marks)**

(c) List the differences between the Limited Liability Partnership (LLP) and the Limited Liability Company. **(6 Marks)**

3. (a) P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2023, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property

in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following: **(7 Marks)**

(i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co.

(b) MNP Private Ltd. is a company registered under the Companies Act, 2013 with Paid Up Share Capital of ₹ 5 crores and turnover of ₹ 35 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013: **(7 Marks)**

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ₹ 45 crores?

(c) Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. **(6 Marks)**

4. (a) M Ltd. contract with Shanti Traders to make and deliver certain machinery to them by 30th June 2023 for ₹ 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 ₹ 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. **(7 Marks)**

(b) What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881? **(7 Marks)**

(c) What is the significance of the Supreme Court and High Court in the Indian judiciary? **(6 Marks)**

5. (a) (i) Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(4 Marks)**

(ii) Classify the following transactions according to the types of goods they are:

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

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

(C) T agrees to sell to S all the apples which will be produced in his garden this year. **(3 Marks)**

(b) State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932? **(7 Marks)**

(c) Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

(i) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.

(ii) A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C? **(6 Marks)**

6. (a) (i) 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? **(4 Marks)**

(ii) Shiva gave a gift of ₹ 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act? **(3 Marks)**

(b) What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? **(6 Marks)**

(c) Write the exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. **(7 Marks)**

ANSWERS

1. (a) (i) As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

(ii) **Promise to pay time-barred debts - Section 25 (3):** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound

to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

(b) (i) Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

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

(ii) A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.

Also, Section 8 Company is allowed to call a general meeting by giving 14 days instead of 21 days.

(c) (i) **Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932):** In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

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

1. **Agreement:** Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.
2. **Sharing of Profit:** Sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
3. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as

an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

(ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

(a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

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

2. (a) 1. According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

(b) **One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]:** The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e-articles.
- Such other person may be given the right to withdraw his consent.

- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year-
  - ➢ shall be eligible to incorporate a OPC;
  - ➢ shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

(c) **Distinction between LLP and Limited Liability Company:** The points of distinction between a LLP and Limited Liability Company are tabulated as follows:

	Basis	**LLP**	**Limited Liability Company**
1.	**Regulating Act**	The LLP Act, 2008.	The Companies Act, 2013.
2.	**Members/Partners**	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	**Internal governance structure**	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).

4.	**Name**	Name of the LLP to contain the word "Limited Liability 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.
5.	**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.
6.	**Liability of members/partners**	Liability of the partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	**Management**	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	**Minimum number of directors/ designated partners**	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

3. (a) (i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)

(1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)]

From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co. after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932)

According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

(b) **Small Company:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

1. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than four crore rupees; and
2. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than forty crore rupees.

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.

(i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 5 crores and having turnover of ₹ 35 crore. Since only one criteria of turnover of ₹ 35 crores is met, but the paid up share capital exceeds ₹ 4 crores and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is ₹ 45 crore, then both the criteria are not fulfilled and MNP Ltd. cannot avail the status of small company in this case also.

(c) 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.

According to Section 18, 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.

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.

4. (a) 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 there by 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.

(b) **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.

(c) (i) **Supreme Court**

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

(ii) **High Court**

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

5. (a) (i) **Right of stoppage of goods in transit:** The problem is based on section 50 of the Sale of Goods Act,1930 dealing with the right of stoppage of the

goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

(A) The seller must be unpaid

(B) He must have parted with the possession of goods

(C) The goods must be in transit

(D) The buyer must have become insolvent

(E) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

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

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

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

(b) **DISSOLUTION BY THE COURT (SECTION 44):** Court may, at the suit of the partner, dissolve a firm on any of the following ground:

(a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

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

(c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

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

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

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

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

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

(i) Deadlock in the management.

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

(iii) Loss of substratum.

(iv) Gambling by a partner on a stock exchange.

(c) (i) According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

(ii) According to section 191 of the Indian Contract Act, 1872, a "Sub- agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub- agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

6. (a) (i) 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.

(ii) Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

In the instant case, Shiva gifted a cheque of Rs. 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

(b) **Quantum Meruit:** Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. *Quantum Meruit* i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at the time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

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

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

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

The claim for quantum meruit arises in the following cases:

(a) When an agreement is discovered to be void or when a contract becomes void.

(b) When something is done without any intention to do so gratuitously.

(c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.

(d) When one party abandons or refuses to perform the contract.

(e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

(f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

(c) The doctrine of Caveat Emptor given under the Sale of Goods Act, 1930 is subject to the following exceptions:

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].
2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
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. [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.

1. (a) (i) Rahul found a smart watch in a restaurant. He enquired about all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the smart watch. The manager refused to return it to Rahul, saying that it did not belong to Rahul. In the light of the Indian Contract Act, 1872, can Rahul recover it from the Manager? **(4 Marks)**

(ii) Mr. Vikas a businessman has been fighting a long-drawn litigation with Mr. Neeraj an industrialist. To support his legal campaign, he enlists the services of Mr. Manoj a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Neeraj. Mr. Manoj agrees but, at the end of the litigation Mr. Vikas refuses to pay to Mr. Manoj. Decide whether Mr. Manoj can recover the amount promised by Mr. Vikas under the provisions of the Indian Contract Act, 1872? **(3 Marks)**

(b) (i) Mr. Samyak was appointed as an employee of Moonlight Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from the company. He set up his own business under proprietorship and undercut Moonlight Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Nine Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Samyak were the sole shareholders and directors. They took over Samyak's business and continued it. Moonlight Timber Private Limited files a suit against Nine Stars Timbers Private Limited for violation of contract. Nine Stars Timbers Private Limited argued that the contract was entered into

between Mr. Samyak and Moonlight Timber Private Limited and as the company has separate legal entity, Nine Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited will be disregarded? **(4 Marks)**

(ii) Pacific Motors Limited is a government company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of ₹ 100 each. Pacific Motors Limited is holding five lacs five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is government company under the provisions of Companies Act, 2013? **(3 Marks)**

(c) (i) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? **(2 Marks)**

(ii) With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner. **(4 Marks)**

2. (a) Mrs. Seema went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Seema insisted that she would like to see the sample of what would be provided to her by the shopkeeper before she agreed upon such a purchase.

The shopkeeper showed her a bowl of rice as a sample. The sample exactly corresponded to the entire lot.

The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice, it contained a mix of long and short grains.

The cook on opening the bags complained that the dish, if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Seema wants to file a suit of fraud against the seller alleging him of selling a mix of good and cheap quality rice. Will she be successful? Explain the basic law on sale by sample under Sale of Goods Act, 1930? What would be your answer in case Mrs. Seema specified her exact requirement as to length of rice? **(7 Marks)**

(b) (i) Explain listed company and unlisted company as per the provisions of the Companies Act, 2013. **(2 Marks)**

(ii) Explain the classification of the companies on the basis of control as per the Companies Act, 2013. **(5 Marks)**

(c) (i) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? **(3 Marks)**

(ii) What are the effects of registration of Limited Liability Partnership? **(3 Marks)**

3. (a) (i) Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2023. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500.

Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ` 3000 to Mr. John? **(4 Marks)**

(ii) Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. **(3 Marks)**

(b) Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ₹ 1,50,000/-.

Mr. R informed the company that he had already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act, 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment? **(7 Marks)**

(c) Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? **(6 Marks)**

4. (a) (i) Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. **(3 Marks)**

(ii) Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs

to Mr. M on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872. **(4 Marks)**

(b) 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)**

(c) Write a short note on the following:

(i) Ministry of Corporate Affairs (MCA)

(ii) Ministry of Home Affairs **(6 Marks)**

5. (a) (i) Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? **(4 Marks)**

(ii) X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? **(3 Marks)**

(b) "Partner indeed virtually embraces the character of both a principal and an agent". Describe the said statement keeping in view of the provisions of the Indian Partnership Act, 1932. **(7 Marks)**

(c) State the essential elements of a contract of bailment. **(6 Marks)**

6. (a) Shankar drew a cheque in favour of Surendar. After having issued the cheque, Shankar 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 Shankar constitute an offence? **(7 Marks)**

(b) Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid? **(6 Marks)**

(c) (i) State the various essential elements involved in the sale of unascertained goods and their appropriation as per the Sale of Goods Act, 1930. **(4 Marks)**

(ii) What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. **(3 Marks)**

ANSWERS

1. (a) (i) **Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872):** 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.

In the light of the above provisions, the manager must return the smart watch to Rahul, since Rahul is entitled to retain the smart watch found against everybody except the true owner.

(ii) The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called an agreement in

restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872. Hence, Mr. Manoj in the given case cannot recover the amount of ` 10 lakh promised by Mr. Vikas because it is a void agreement and cannot be enforced by law.

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

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

(ii) 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, Rama Auto Private Limited is a subsidiary company of Pacific Motors Limited because Pacific Motors Limited is holding more than one-half of the total voting power in Rama Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Rama Auto Private Limited, being a subsidiary of Pacific Motors Limited will also be considered as Government Company.

(c) (i) 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.

(ii) Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

(i) The insolvent partner cannot be continued as a partner.

(ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.

(iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

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

(v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

2. (a) (i) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Seema will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) **Sale by Sample (Section 17 of the Sale of Goods Act, 1930):** As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

As per the provisions of Sub-Section (2) of section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(iii) In case Mrs. Seema specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

(b) (i) **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 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.

(ii) 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 any body 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.

(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.

(c) (i) Partners (Section 5 of Limited Liability Partnership Act, 2008):

Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

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

(b) he is an undischarged insolvent; or

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

(ii) Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

On registration, a LLP shall, by its name, be capable of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

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

1. There must be an agreement between all the persons concerned;

2. The agreement must be to carry on some business;

3. The agreement must be to share the profits of a business and

4. The business was carried on by all or any of them acting for all.

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

By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them.

Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim the rest of ₹ 1500 from Mr. Raheem.

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

The two clauses of Section 27 bring out an important point of distinction between the two categories of cases of misapplication of money by partners.

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

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

The firm would be liable in both cases.

(b) (i) Fate of the suit and the liability of Mr. R towards the company:

Doctrine of the Indoor Management

According to the Doctrine of Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-the *Royal British Bank vs. Turquand*. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ₹ 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

(ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management in no way rewards those who behave negligently. It is the duty of the outsider to make the necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

(c) **Consideration [Section 2(d) of the Indian Contract Act, 1872]:** When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Legal Rules Regarding Consideration

(i) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.

(ii) **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.

(iii) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

(iv) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

(v) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.

(vi) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence, such a contract is void for want of consideration.

(vii) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

(viii) **Consideration must not be unlawful, immoral, or opposed to public policy:** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

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

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

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

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

Promises to bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

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

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

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

(b) 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 & 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.

(c) (i) **Ministry of Corporate Affairs (MCA):** 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.

(ii) **Ministry of Home Affairs:** It is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

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

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

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

(ii) Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it will not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price. (Section 9 and section 10 of the Sale of Goods Act, 1930)

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

(b) **"Partner indeed virtually embraces the character of both a principal and an agent":** Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent. The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either. 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.

(c) **Essential elements of a contract of bailment:** Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is 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 directions of the person delivering them. The essential elements of the contract of the bailment are:

(i) *Contract:* Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.

(ii) *Delivery of goods:* It involves the delivery of goods from one person to another for some purposes. Bailment is only for moveable goods and never for immovable goods or money.

(iii) *Purpose:* The goods are delivered for some purpose. The purpose may be express or implied.

(iv) *Possession:* In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee. The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods.

(v) *Return of goods:* Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction.

6. (a) As per the facts stated in the question, Shankar (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and also 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 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 Shankar, i.e., his request to stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

(b) 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, 1872. These include:

(i) Guarantee obtained by means of misrepresentation.

(ii) Guarantee obtained by means of keeping silence as to material circumstances.

(iii) When a 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.

(c) (i) **Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930):** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

(a) There is a contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(e) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(f) The assent may be express or implied.

(g) The assent may be given either before or after appropriation.

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

(B) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.