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Business Laws

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Question 1:-

What are the main sources of law in India and how do they contribute to the legal framework of the country?

Answer:-

The main sources of law in India are the Constitution, statutes passed by Parliament and State Assemblies, judicial precedents, and established customs and usages. India's legal system is founded on the principles of parliamentary democracy, with the Constitution serving as the fundamental basis for all laws. Parliament and State Assemblies, where elected representatives make laws, are the ultimate law-making bodies. While laws passed by Parliament apply across India, state legislatures enact laws applicable only within their respective states.

Question 2:-

Explain the distribution of law-making powers between the Central Government and State Governments as outlined in the Indian Constitution.

Answer:-

The Government of India Act, 1935, was a precursor to the Indian Constitution and played a crucial role in defining the transition from a "unitary" to a "federal" system. It allocated powers between the Centre and the States to prevent conflicts. The Federal Court, established in 1937, had jurisdiction over appellate, original, and advisory matters, including

civil and criminal cases. The Advisory Jurisdiction allowed the Federal Court to advise the Governor-General on public matters. The Federal Court was eventually succeeded by the Supreme Court of India. The Constitution of India, adopted in 1950, forms the corner stone of the Indian legal system. It outlines the framework for the democratic system and the rights and responsibilities of citizens. Fundamental rights and duties are enshrined in the Constitution, providing a strong foundation for laws made for and by the people. India's legal system is a hybrid one, with interconnected laws.

The Constitution divides the law-making power between the Central Government and State Governments through three lists: the Central List, State List, and Joint List. Matters listed in each list determine whether a subject becomes the domain of Central law, State law or both. For instance, Income Tax falls under the Central List, resulting in a single Income Tax law for the entire country, administered by the Central Government's Ministry of Finance. In contrast, issues like the levy of stamp duty are governed by both Central and State laws, exemplifying the of Indian law-making.

Question 3:-

Explain the fundamental differences between Criminal Law and Civil Law in India. Provide insights into the key legal frameworks governing each type of law and their primary objectives.

Answer:-

In India, Criminal Law and Civil Law are distinct legal domains with different purposes and frameworks. Criminal Law is concerned with violations of the rule of law or public wrongs and the subsequent punishment. It is primarily governed by the Indian Penal Code, 1860, which defines crimes, their nature, and the associated penalties. The Code of Criminal Procedure, 1973 (Crpc), outlines the procedural aspects for enforcing these penalties.

Examples of criminal offenses under Indian law include murder, rape, theft, fraud, cheating, and assault. The focus in criminal cases is on punishment and societal order.

In contrast, Civil Law pertains to disputes between individuals or organizations and focuses on resolving conflicts rather than punishment. The Code of Civil Procedure, 1908 (CPC), governs the process and administration of civil law.

Civil law encompasses various areas such as Law of Contract, Family Law, Property Law, and Law of Tort. Examples of civil offenses include breach of contract, non-delivery of goods, non-payment of dues, defamation, and disputes between landlords and tenants

Question 4:-

Explain the concept of Common Law and the principle of Stare Decisis in the Indian legal system. How does State Decisis influence judicial decisions, and what is its significance in legal proceedings?

Answer:-

Common Law in India is a legal system where decisions made by courts in previous cases serve as binding precedents for future cases. The doctrine of Stare Decisis, a Latin phrase meaning "to stand by that which is decided," is fundamental to this legal framework. It mandates that courts must follow the principles or judgments established in previous cases when ruling on similar or analogous cases. This principle helps maintain consistency and predictability in the legal system.

In practical terms, when a new case presents facts and circumstances similar to a prior case with a legal precedent, the doctrine of Stare Decisis obliges the court to follow the earlier decision. This ensures that the law is applied consistently and that individuals and organizations can rely on established legal principles when navigating the legal system.

Stare Decisis is of great significance in the Indian legal system as it promotes fairness, equity, and the rule of law by ensuring that legal decisions are not arbitrary but based on established legal principles. It provides guidance to both the judiciary and legal practitioners when interpreting and applying the law to specific cases.

Question 5:-

Can you describe the structure of the Indian judicial system, including its key components and their respective roles within the system?

Answer:- The Indian judicial system is a complex and hierarchically organized system that serves as the guardian of the rule of law and justice in the country. It can be divided into multiple layers, each with its specific functions and jurisdictions.

Supreme Court of India: At the apex of the Indian judicial system is the Supreme Court. It acts as the highest court of appeal and is responsible for interpreting the Constitution and ensuring uniformity in the application of laws throughout the country. The Supreme Court can hear appeals from High Courts and other specialized courts, making it the ultimate authority in legal matters.

High Courts: India has 25 High Courts, each serving one or more states or union territories. High Courts have jurisdiction over their respective states or territories and serve as appellate courts for cases decided by lower courts. They also have the authority to issue writs and handle matters related to the violation of fundamental rights.

District Courts: Below the High Courts are District Courts, which are established in every district of the country. District Courts handle civil and criminal cases and are typically the first level of the judiciary that individuals encounter. These courts have the authority to try cases involving a wide range of issues.

Subordinate Courts: Subordinate Courts, also known as lower courts, come under the District Courts.

These include various levels of courts, such as sessions courts, magistrate courts, and specialized courts (e.g., family courts, consumer courts). Subordinate Courts primarily handle cases within their specified jurisdictions, and appeals from their decisions can be made to the District Court or High Court, depending on the nature of the case

Tribunals and Specialized Courts: India has various tribunals and specialized courts to handle specific types of cases. These include the National Green Tribunal, Income Tax Appellate Tribunal, and others, which are designed to expedite justice and provide expertise in their respective areas of law.

Gram Nyayalayas: These are rural or village courts established to ensure access to justice for residents of rural areas. Gram Nyayalayas handle petty civil and criminal cases and aim to reduce the burden on higher courts.

In summary, the Indian judicial system is structured with the Supreme Court at the apex, followed by High Courts, District Courts, and Subordinate Courts. Specialized tribunals and village-level Gram Nyayalayas contribute to a comprehensive system that aims to provide access to justice for all citizens.

Question 6:-

Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

Answer:-

Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as

1. When one person signifies to another his willingness to do or to abstain from doing anything
2. With a view to obtain the assent of that other to such act or abstinence
3. He is said to make a proposal.

Essentials: The following are important essentials of an offer: -

- 1) Must be capable of creating legal relation.

II) Must be certain, definite and not vague.

III) Must be communicated.

IV) Must be made with a view to obtaining the assent of the other party

V) May be conditional

VI) Offer should not contain a term the non-compliance of which would amount to acceptance

VII) May be general or specific

VIII) May be expressed or implied

IX) A statement of price is not an offer

Question 7:-

Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of Rs. 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of Rs. 10,000 to Mr. Vikram with the words, "An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward." State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of Rs. 10,000.

Answer:-

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. But there is an exception to above provisions. When advertisement in newspaper is made for reward, it is the general offer to public.

On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay Rs. 10,000 to Mr. Vikram.

Question 8:-

Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

Answer:-

Modes of revocation of Offer

(i) By notice of revocation

(ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.

(iii) By non-fulfilment of condition precedent: Where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked.

(iv) By death or insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

Question 9:-

Define the term Acceptance. Discuss the legal provisions relating to communication of Acceptance.

Answer:-

As per the provisions of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. The proposal, when accepted, becomes a promise. This is known as acceptance.

Legal rules regarding valid acceptance:

1. **Acceptance can only be given by the person to whom the offer is made or who has the knowledge of the offer:** In the case of a specific offer, it can be accepted only by the person to whom it is made. In the case of a general offer, it can be accepted by any person who has the knowledge of the offer.

2. **Acceptance must be absolute and unqualified:** The acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

3. **The acceptance must be communicated:** To conclude the contract between the parties, the acceptance must be communicated in a reasonable form. Any conditional acceptance is no acceptance. If the proposal is accepted by the offeree, he must have the complete knowledge of the offer made to him.

4. **Acceptance must be in a prescribed mode:** Where the mode of acceptance is prescribed in a proposal, it must be accepted in that manner. But, if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise (not in the prescribed manner), the proposer is presumed to have consented to the acceptance.

5. **Time:** Acceptance must be given within a specified time limit, and if no time is fixed, then the acceptance shall be given within a reasonable time and before the offer lapses.

6. **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer unless the offeree has in any previous conduct indicated that his silence is the evidence of the acceptance.

7. **Acceptance by conduct/Implied Acceptance:** The performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal constitutes an acceptance of the proposal.

Question 10:-

Mr. Pratham 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. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872?

Answer:-

1. As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.
2. In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal.
3. On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

Question 11:-

Write the difference between Void and Illegal Agreements.

Answer:-

Basis	Void Agreements	Illegal Agreements
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Enforceability by law	It is an agreement not enforceable by law, but they are not forbidden under law.	Illegal Agreements are forbidden under law.
Interchangeability	All Void Agreements need not be illegal.	All Illegal Agreements are void ab-initio.
Punishment	Void Agreements are not punishable.	Illegal agreements may be punishable with imprisonment or both.
Other Related Transactions	Collateral Transactions are not affected.	Collateral Transactions are also void.
Example	Agreement entered into with a Minor is VOID AB INITIO (from the very beginning).	Agreement to murder a person.

Question 12:-

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

Answer:-

Basis	Void Contract	Voidable Contract
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.

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.
Cause	A contract becomes void due to A change in law circumstances or change in beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
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.
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.

Question 13:-

Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872?

Answer:-

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.

Durga Prasad vs Baldeo: D constructed a market at the instance of District Collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the Contract was void.

(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.

(iv) **Consideration may be past, present or future:**

Past Consideration: The consideration which has already moved before the formation of agreement.

For Consideration to be treated as past it must move by a previous request.

Example X renders some service to Y at Y's request in the month of May. In June, Y promises to pay X Rs. 1,000 for his past services. Past services amount to past consideration. X can recover Rs. 1,000 from Y.

Present Consideration Executed Consideration (consists in the performance): The consideration which moves simultaneously with the promise, is called present consideration.

Future Consideration or Executory consideration (consists in a promise): The consideration which is to be moved after the formation of agreement is called future consideration.

(v) **Consideration need not be adequate:** Provision is given below

(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 because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

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 but where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration.

Example: X promises Y, his advocate, to pay an additional sum if the suit was successful. The suit was declared in favour of X but X refused to pay additional sum. It was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement.

(vii) **Consideration must be real and not illusory:** Consideration is not valid if it is (i) physically impossible (e.g. to discover treasure by magic), (ii) legally not permissible (e.g. to murder a person), (iii) uncertain (e.g. to pay a "reasonable" salary for services rendered), or (iv) illusory (e.g. fulfilment of a pre-existing obligation).

(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.

Question 14:-

Mr. Balwant, an old man, by a registered deed of gift, granted certain land propert to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs. 20,000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant.

On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?

Answer:-

1. In India, consideration may proceed from the promisee or any other person who is not a party to the contract.
2. The definition of consideration as given in section 2(d) makes the above statement clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem

1. Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration came from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant.

Question 15:-

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

Or

Stranger to a contract cannot sue, However in some cases even a stranger to a contract may enforce a claim. Explain

Answer:-

Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.

The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

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

7. **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Question 16:-

State the exceptions to the rule "An agreement without consideration is void".

Or

No Consideration No Contract, Comment.

Answer:-

No consideration, no contract

1. Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void.
2. No consideration, no contract is a general rule.
3. However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and enforceable.
4. These exceptions are as follows:

(i) Agreement made on account of natural love and affection Section 25(1):

If an agreement is

- a) in writing
- b) registered under the law and
- c) made on account of natural love and affection
- d) between the parties standing in a near relation to each other

It will be enforceable at law even if there is no consideration.

Thus, where A, for natural love and affection, promises to give his son, B. 1,00,000 in writing and registers it. This is a valid contract.

(ii) Compensation for past voluntary services Section 25 (2) :

a) A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.

b) Thus, when A finds B's purse and gives it to him and B promises to give A Rs. 5,000, this is a valid contract.

(iii) Promise to pay time-barred debts Section 25 (3):

a) Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and enforceable even though there is no consideration.

b) If A owes B Rs. 1,00,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay Rs. 50,000 on account of this debt, it constitutes a valid contract.

(iv) Contract of agency (Section 185): No consideration is necessary to create an agency.

(v) Completed gift (Explanation 1 to Section 25): A completed gift needs no consideration. Thus, if a person transfers some property by a duly written and registered deed as a gift, he cannot claim back the property subsequently on the ground of lack of consideration.

(vi) Bailment (Section 148): No consideration is required to effect the contract of bailment.

(vii) Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity. There the contract shall be valid.

Question 17:-

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a

loan of Rs. 40,000. He was very happy to get Rs. 40,000 and quickly went to the market and purchased a laptop worth Rs. 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872? [RTP Nov 21]

Answer:-

1. As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning.
2. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.
3. However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.
4. Hence, in the present case, Rahul is not liable to repay Rs.40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Question 18:-

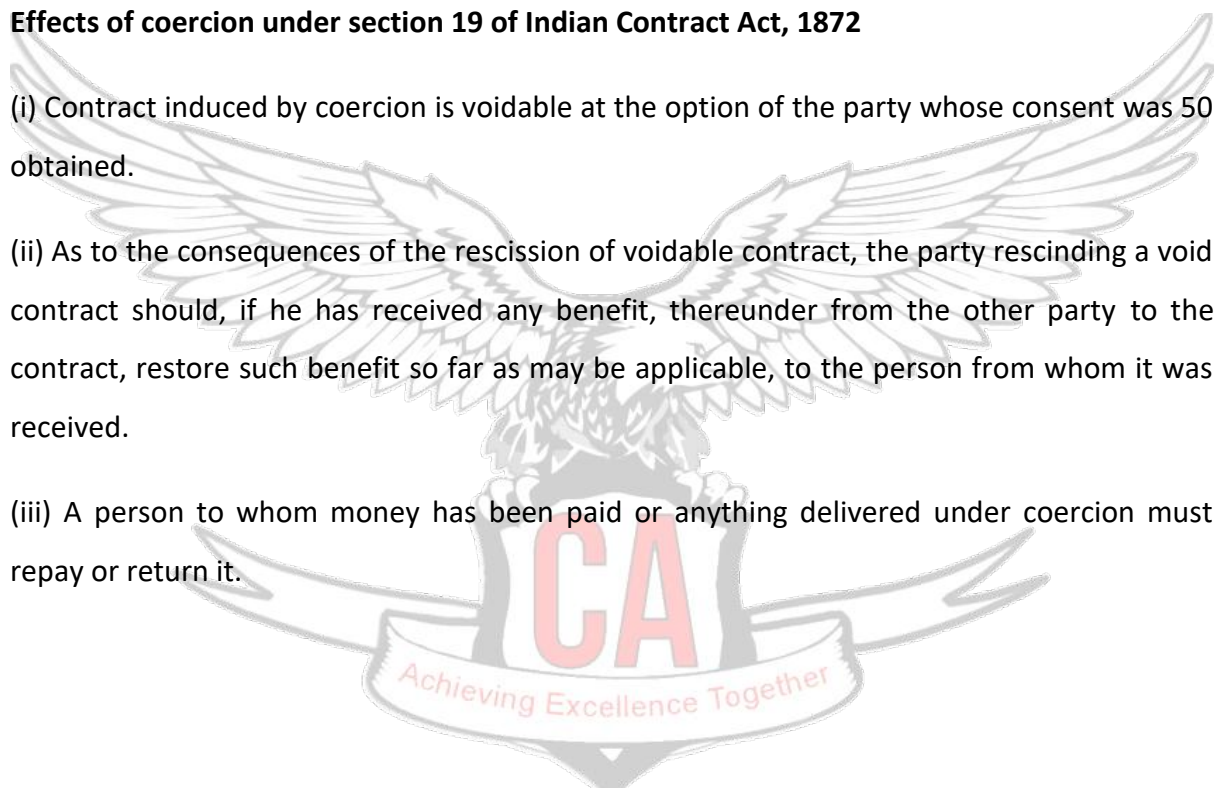
Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872.

Answer:-

Coercion is –

Act	Intention
(a) the committing, or threatening to commit any act forbidden by the Indian Penal Code, or (b) the unlawful detaining or threatening to detain, any property, to the prejudice [harm or injury] of any person	With the intention of causing any person to enter into an agreement.

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

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

Question 19:-

Define Fraud, whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872.

Answer:-

Fraud means and includes -

Commission of the following acts -	Committed by -	Intention

<p>(b) Suggestion as a Fact, of something which is not true, by a person who does not believe it to be true,</p>	<p>(a) A party to the Contract, or</p>	<p>To deceive another party the contract, his Agent,</p>
<p>(c) Active concealment of a Fact by one having knowledge or belief of the fact,</p>	<p>(b) By any person with the connivance of the party to the Contract, or</p>	<p>OR To induce another party enter into the contract.</p>
<p>(d) Promise made without any intention of performing it,</p>	<p>(c) An agent of the party to the Contract</p>	
<p>(e) Any other act fitted to deceive,</p>		
<p>(f) Any such act or omission as specifically declared by law to be fraudulent.</p>		

DOES SILENCE AMOUNT TO FRAUD?

<p>Silence Not Fraud [Explanation to Section 17]</p>	<p>Exceptions i.e., Silence = Fraud</p>
<p>Mere silence as to facts, likely to affect the willingness of a person to enter into a Contract is not Fraud. Caveat Emptor' i.e., let the purchaser beware is the rule applicable to contracts.</p> <p>Example: A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.</p>	<p>a) Having regard to the circumstances, if it is the duty of the person (keeping silence) to speak,</p> <p>b) Silence by itself is equivalent to Speech.</p>

Question 20:-

(a) Explain the concept of 'misrepresentation' in matters of contract.

(b) Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.

Answer:-

Misrepresentation means and INCLUDES

Positive Assertion	<ul style="list-style-type: none">• of such fact, which is not true, though he believes it to be true,• made in a manner not warranted by the information of the person making it.
Any Breach of Duty	<ul style="list-style-type: none">• made without an intent to deceive, but bringing gains and advantage to the person committing it, or to any one claiming under him,• by misleading another to his prejudice, or to the prejudice of anyone claiming under him.
Causing the other party to make mistake	<ul style="list-style-type: none">• as to the substance of the subject matter of the agreement

In simple words misrepresentation means:

1. Positive false statement made without any basis for info
2. a beach of duty which brings advantage to person committing it
3. inducement of mistake about subject matter

In the instant case

1. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872].

2. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

Question 21:-

A clause in a life insurance policy was that "no suit to recover under the policy shall be brought after one year from the date of death of assured." X died and his legal representatives filed a suit to recover the assured sum after two and half years. Is this suit maintainable?

Answer:-

Agreement in restraint of legal proceedings (Section 28):

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 or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

In the instant case the suit is not maintainable because the clause in policy is void because it curtailed the prescribed period of limitation (which is 3 years) according to Law of Limitation Act.

Question 22:-

What is a wagering agreement?

Answer:-

Wagering agreement (Section 30 of the Indian Contract Act, 1872)

1. 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.
2. 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.
3. **For example**, A agrees to pay Rs. 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

Question 23:-

Point out with reason whether the following agreements are valid or void:

- (a) Kamala promises Ramesh to lend Rs 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- (b) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- (c) Ram sells the goodwill of his shop to Shyam for Rs 4,00,000 and promises not to carry on such business forever and anywhere in India.
- (d) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- (e) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

Answer:-

(a) Void Agreement: As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

(b) Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.

(c) Void Agreement: As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

(d) Void Agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(e) Valid Agreement: An agreement with alien friend is valid, but an agreement with alien enemy is void.

Question 24:-

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

Answer:-

1. Discharge by Mutual Agreement

(a) **Novation:**

(a) Novation means substitution of a new Contract in the place of the original contract.

(b) This may happen either between - (i) the same parties, or (ii) different parties.

(c) Novation implies that a New Contract comes into existence. So, there must be mutual consent of all the parties to the Original Contract.

(d) Sec. 62: When the parties agree to substitute a new Contract, the original Contract need not be performed.

(b) **Rescission:**

(a) A contract is also discharged by rescission when the parties to a contract agree to rescind it, the contract need not be performed.

(b) In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. It is needless to point out that novation also involves rescission. Both in novation and in rescission, the contract is discharged by mutual agreement.

(c) Alteration:

(a) As in the case of novation and rescission, so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed.

(b) In other words, a contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

2. Promisee may waive or remit performance of promise (Section 63): "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.

3. Restoration of Benefit under a Voidable Contract (Section 64): The law on the subject is "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. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received".

4. Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65): 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."

5. Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67): If any promisee neglects or refuses to afford the promisor reasonable a facility for the performance of his promise, the promisor is excused by such neglect or refusal as to any non- performance caused thereby.

Question 25:-

"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.

Answer:-

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.

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

Effect of anticipatory breach: The 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.

Question 26:-

What do you mean by quantum Meruit and state the rules relating to such contracts.

Answer:-

1. **Meaning:** Quantum Meruit means as much as is merited (earned).

2. Quantum Meruit - Exception to Normal Rule:

(a) Unless a party has performed his promise in full, he cannot claim performance from the other party.

(b) To this rule, there are certain exceptions based on "Quantum Meruit".

(c) When a person has done some work under a contract, and other party either - (i) repudiates the Contract, or (ii) some unexpected event happens making further performance of contract impossible, then the party who performed the work, can claim remuneration for work done.

3. When and to whom right arises?

(a) The Original Contract must have been discharged, by the breach of a party by non-performance. If the Original Contract exists, the aggrieved party can resort to damages, he cannot claim quantum meruit remedy.

(b) The Right to sue on Quantum Meruit lies with the party who is not at fault, i.e. who has performed his part of the Contract.

4. 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

Question 27:-

Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

Answer:-

Vindictive or Exemplary damages

These damages may be awarded only in two cases:

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
- (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

Question 28:-

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

Answer:-

Contingent Contracts [Sec. 31]: A Contingent Contract is a Contract

- (a) to do, or not to do something,
- (b) if some event, collateral to such Contract, does or does not happen.

Example: A contracts to pay B ₹10,000 if B's house is burnt. This is a Contingent Contract.

Example: Contracts of Insurance, indemnity and guarantee.

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.

Example: 'A' promises to pay 50,000 to 'B' if it rains on first of the next month.

(b) The event referred to, is 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.

Example 1: If A promises to pay B Rs. 100,000, if he so chooses, it is not a contingent contract (In fact, it is not a contract at all). However, where the event is within the promisor's will but not merely his will, it may be contingent contract.

Example 2: If A promises to pay B Rs. 100,000 if A left Delhi for Mumbai on a particular day, it is a contingent contract, because going to Mumbai is an event no doubt within A's will, but is not merely his will.

(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.

Example: 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfilment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.

Question 29:-

Explain the term 'Quasi Contracts and state their Characteristics.

Answer:-

Quasi Contracts: Under certain special Circumstances obligation resembling those created by a contract is imposed by law although the parties have never entered into a contract.

Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

The 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.

Question 30:-

Define 'Contract of Indemnity' as per the Indian Contract Act, 1872. What are the parties to a contract of indemnity? Give an example to explain the contract of indemnity.

Answer:-

Contract of indemnity:

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

There are two parties in this form of contract. The party who promises to indemnify/ save the other party from loss is known as 'indemnifier', whereas the party who is promised to be saved against the loss is known as 'indemnified' or indemnity holder.

Example: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of Rs. 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

Question 31:-

State the rights of the indemnity-holder when sued?

Answer:-

According to the Section 125 of the Indian Contract Act, 1872 the indemnity holder i.e., promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit.
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Section 125 is by no means exhaustive, which deals only with his rights in the event of his being sued. The indemnity holder has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute he is entitled to call upon his indemnifier to save him from that liability and to pay it off.

Question 32:-

Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

Answer:-

Section 124 of the Indian Contract Act, 1872 says 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 says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as "contract of guarantee". The conditions under which the guarantee is invalid or void are stated in section 142,143 and 144 of the Indian Contract Act are:

- i) Guarantee obtained by means of representation
- ii) Creditor obtained by any guarantee by means of keeping silence as to material circumstances.

When the 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 the other party fails to join as such.

Question 33:-

Distinguish between a contract of Indemnity and a contract of Guarantee as per The Indian Contract, 1872.

Answer:-

Point of distinction	Contract of Indemnity	Contract of Guarantee
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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.

Question 34:-

What is the liability of a bailee making unauthorized use of goods bailed?

Answer:-

Liability of bailee making unauthorised use of goods bailed:

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Question 35:-

On the basis of reward, what are various categories of bailment?

Answer:-

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

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

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

Question 36:-

Mrs. Shriya delivered her old silver jewellery to Mr. Yash a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good

(silver bowl) to put it into box kept at Mr. Yash's shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Answer:-

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

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

Thus, the mere keeping of the box at Yash's shop, when Mrs. Shriya herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. Shriya did not deliver the complete possession of the good by keeping the keys with herself.

Question 37:-

What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872?

Answer:-

As per the provisions of section 168 and 169 of the Indian Contract Act, 1872

(i) The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner. But 'finder of lost goods can ask for reimbursement for expenditure incurred for preserving the

goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

(ii) The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

(a) when the article is in danger of perishing and losing the greater part of the value or

(b) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Question 38:-

As per the Indian Contract Act, 1872, answer the following:

- (i) Definition of Pledge, pawnor and pawnee
- (ii) Essential characteristics of contract of pledge

Answer:-

(i) "Pledge", "pawnor" and "pawnee" defined [Section 172]: The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

(ii) Since Pledge is a special kind of bailment, all the essential of bailment are also essentials of Pledge. Apart from that, the characteristics of the pledge are:

- (1) There shall be a bailment of security against payment or performance of the promise.
- (2) The subject matter of pledge is goods.

(3) Goods pledged for shall be in existence

(4) There shall be delivery of goods from pledger to pledgee.

Question 39:-

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 the 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.

Answer:-

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.

Question 40:-

Give four differences between Bailment and Pledge.

Answer:-

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

(a) **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.

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

(c) **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.

(d) **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.

(e) **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Question 41:-

Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

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?

Answer:-

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 subagent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of subagent appointed by B i.e., C (sub-agent).

Question 42:-

Megha lends a sum of Rs. 20,000 to Bhim, on the security of two shares of a Prema Limited on 1st April 2019. On 15th June, 2019, the company issued two bonus shares. Bhim returns the loan amount of Rs. 20,000 with interest but Megha returns only two shares which were pledged and refuses to give the two bonus shares. Advise Bhim in the light of the provisions of the Indian Contract Act, 1872.

Answer:-

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 case, the contract for supply of machinery by Rajeev Ltd. to Mr. Gogia by 31st May, 2019 was frustrated due to the occurrence of an earthquake on 31st March, 2019 which has led to the break in the operations of Rajeev Ltd. for at least one year.

Since, Mr. Gogia obtains no benefit from the contract, and he has paid part of a sum before frustration, he can recover the money paid in advance because it can be said there has been total failure of consideration. Hence, Mr. Gogia can recover the amount of Rs. 2,00,000 from Rajeev Ltd.

Question 43:-

State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.

Answer:-

Essentials of Contract of Sale

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale

Question 44:-

Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red

stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

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

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

Answer:-

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.

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

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika.

Question 45:-

Explain the term goods and other related terms under the Sale of Goods Act, 1930.

Answer:-

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7) of the Sales of Goods Act, 1930]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

Question 46:-

Differentiate between Ascertained and Unascertained Goods with example.

Answer :-

Ascertained Goods

1. Those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.'
2. When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Unascertained goods

The goods which are not specifically identified or ascertained at the time of making of the contract are known as 'unascertained goods'. They are indicated or defined only by description or sample.

Question 47:-

What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes/forms of delivery.

Answer:-

Delivery of goods [section 2(2) of the Sale of Goods Act, 1930]: Delivery means voluntary transfer of possession from one person to another. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Modes of delivery: Following are the modes of delivery for transfer of possession:

(i) **Actual delivery:** When the goods are physically delivered to the buyer.

(ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

(iii) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

Question 48:-

What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.

Answer:-

Destruction of Goods-Consequences: 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. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

In a similar way Section 8 provides that an agreement to sell specific goods becomes void if 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 agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question 49:-

Difference between a 'Condition' and a 'Warranty' in a contract of sale.

Answer:-

Basis	Condition	Warranty
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Meaning	A condition is a stipulation essential to the main purpose of the contract	A warranty is a stipulation collateral to the main purpose of the contract
Effect	Breach of condition gives rise to a right to treat the contract as repudiated	In case of breach of warranty, the aggrieved party can claim damage only
Interchange ability	Breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition

Question 50:-

When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain

Answer:-

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

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

Question 51:-

Explain the “condition as to Merchantability” and “condition as to wholesomeness” under the Sale of Goods Act, 1930.

Answer:-

Condition as to Merchantability [Section 16(2) of the Sale of Goods Act. 1930]:

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

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

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

Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used.

Condition as to wholesomeness:

In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Question 52:-

C bought a bun from a baker's shop. The piece of bun contained a stone in it which broke C's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?

Answer:-

Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Hence, C could recover damages in light of the violation of said condition as regards to the consumption of goods i.e. the bun from the baker which is not of merchantable quality.

Question 53:-

What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act.

Answer:-

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (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 a reasonable examination of the sample.

Question 54:-

Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?

Answer:-

Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

Sections 14 and 16 of the Sale of Goods Act, 1930 disclose the following implied warranties:

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.

Example: X sold a second hand Radio to Y who spent Rs. 100 on the repairs of this radio. This radio was seized by the police as it was a stolen one. Y filed a suit against X for the recovery of damages for breach of warranty of quiet possession including the cost of repairs. It was held that Y was entitled to recover the same. [Mason v. Birmingham]

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.

Example: X borrowed Rs. 500 from Y and hypothecated his radio with Y as security. Later on X sold this radio to Z who bought in good faith. Here, Z can claim damages from X because his possession is disturbed by Y having a charge.

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.

Example: X purchased a tin of disinfectant powder which required to be opened with special care. X's wife while opening the tin was injured as the powder flew into her eyes. Held, the seller was liable for the injury sustained by X's wife because of breach of warranty. [Clarke v. Army and Navy Cooperative Society Ltd. (1903) 1 KB 155]

Question 55:-

What is the Doctrine of "Caveat Emptor"?

Answer:-

1. The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim 'Caveat Emptor' meaning thereby 'Let the buyer beware.'
2. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express term of the contract
3. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

Question 56:-

What are the exceptions to the Doctrine of "Caveat Emptor"?

Answer:-

Certain exceptions to the rule which are stated as under:

i) **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

ii) **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.

iii) **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.

iv) **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination.

v) **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.

vi) **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.

vii) **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.

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

Question 57:-

"Risk Prima facie passes with the property" Elaborate in the Context to the Sale of Goods Act, 1930.

Answer:-

1. **Seller's risk:** Unless otherwise agreed upon, goods remain only at the Seller's risk until the property therein is transferred to the Buyer. Hence, risk is borne by the Buyer, only when the property in the Goods passes over to him.

2. **Risk passes with property:** When the property in Goods is transferred to Buyer, goods are at the Buyer's risk, irrespective of whether delivery has been made or not. [Sec. 26]

3. **Exceptions:** The following are the exceptions to the general rule that risk passes with property-

(a) **Delayed delivery:** Where delivery of Goods has been delayed through the fault of either Buyer or Seller, goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(b) **Agreement between parties:** The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.

(c) **Usage of Trade:** In some cases trade customs may put the ownership and risk separately in two parties.

4. **Bailee's Duties:** Nothing contained in Sec. 26 shall affect the duties or liabilities of either the Seller or Buyer as a bailee of Goods of the other party.

Question 58:-

A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930?

Answer:-

Delivery of different description:

As per Section 37(3) of the Sale of Goods Act, 1930 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 the rest or may reject the whole.

Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

Question 59:-

What are the rules related to Acceptance of Delivery of Goods?

Answer:-

Rules related to acceptance of delivery: Acceptance is deemed to take place when the buyer-

(a) intimates to the seller that he had accepted the goods; or

(b) does any act to the goods, which is inconsistent with the ownership of the seller; or

(c) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery and also reasonable charge for the care and custody of the goods (Sections 43 and 44)

Question 60:-

Describe the term "Unpaid Seller" under the sale of Goods act, 1930?

Answer:-

Unpaid Seller

According to Section 45 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 has been received as conditional payment, and it has been dishonoured.

Question 61:-

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Answer:-

(i) **Right of lien (Section 47):** According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit:

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

Note: The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

According to Section 49 the unpaid seller loses his lien on goods:

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
2. When the buyer or his agent lawfully obtains possession of the goods
3. By waiver thereof.

Note: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

(ii) **Right of stoppage in transit (Section 50):** When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer and may retain them until paid or tendered price of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

(a) The seller must be unpaid.

(b) The seller must have parted with the possession of goods.

(c) The goods must be in the course of transit.

(d) The buyer must have become insolvent.

(e) The right is subject to provisions of the Act.

(iii) Right to re-sell the goods (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) **Where the goods are of a perishable nature:** In such a case, the buyer need not be informed of the intention of resale.

(ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

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

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell

the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) **Where the property in goods has not passed to the buyer:** The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

Question 62:-

What is the difference between 'right of lien' and 'right of stoppage in transit'?

Answer:-

Basis of Difference	Right of Lien	Right of Stoppage in Transit
Essence	To retain possession	To regain possession
Essentials	Seller should be in possession of goods	(i) Seller should have parted with the possession (ii) possession should be with a carrier and (iii) Buyer has not acquired the possession.
Buyer Insolvency	Right of lien can be exercised even when the buyer is not insolvent	But it is not the case with right of stoppage in transit.
Begins/Ends	Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.	

Question 63:-

Discuss the rights of an unpaid seller against the buyer under The Sales of Goods Act, 1930.

Answer:-

An Unpaid Seller has the following rights against the Buyer -

1. Suit for price [Sec. 55(1)]:

(a) Where under a contract of sale the property in Goods has passed to Buyer, and Buyer wrongfully neglects or refuses to pay the price, the Seller can sue the Buyer for the price of goods.

(b) When under the contract of sale, price is payable on a certain day irrespective of delivery and Buyer wrongfully neglects or refuses to pay the price, Seller may sue him for the price. Unpaid Seller has this right even though property has not passed to the Buyer and Goods have not been appropriated to the contract.

2. Damages for non-acceptance [Sec. 56]: Where the Buyer wrongfully neglects or refuses to accept and pay for goods, the Seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date [Sec. 60]: Where the Buyer repudiates a contract before the date of delivery, the Seller may (i) treat the contract as subsisting and wait till the date of delivery or (ii) treat the contract as rescinded and sue the Buyer for damages for the breach on his part.

4. Interest by way of damages and special damages [Sec. 61]:

(a) When under a contract of sale, the Seller tenders goods to the buyer who wrongfully refuses or neglects to accept and pay the price, the Seller has a further right to claim interest on the amount of price.

(b) Unpaid Seller can claim interest only when he can recover the price, i.e., if the Seller's remedy is to claim damages, then he cannot claim interest.

(c) The interest may be calculated from the date of tender of Goods or from the date on which the price was payable.

(d) The rate of interest to be awarded is at the discretion of the Court.

Question 64:-

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

Answer:-

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

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

2. **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific 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 treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty.

But he may

(i) set up against the seller the breach of warranty in diminution or extinction of the price;

or

(ii) sue the seller for damages for breach of warranty.

4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the

contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for breach.

5. **Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

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

Question 65:-

Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction."

Answer:-

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

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

(b) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

(c) **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.

(d) **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.

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

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

Question 66:-

Define Partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

Answer:-

Definition__ Sec. 4: 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.

The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:

- 1) Association of two or more person
- 2) Agreement between person
- 3) Business
- 4) Sharing of profit
- 5) A business carried on by all or any of them acting for all (Mutual Agency)

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.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

AGREEMENT BETWEEN PERSON: Partnership originates from an Agreement/Contract between persons. Agreement may be express (written or oral) or implied.

BUSINESS: Partnership can be formed only for the purpose of carrying on some business. 'Business includes trade, occupation and profession. Associations created for charitable, religious and social purposes are not Partnerships.

SHARING OF PROFIT: a) Sharing the profits of business is the essence of Partnership but it cannot be the conclusive evidence as to existence of Partnership.

b) Sharing of profits implies sharing of losses as well, unless agreed otherwise.

c) A person may become a Partner only in profits and not for losses by agreement between all Partners.

d) Ratio in which profits and losses will be shared is based on agreement amongst the Partners.

e) Though sharing of profits of a business is essential, it does not mean that everyone who participates in the profits of a business is necessarily a Partner, e.g. a Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a Partner.

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.

(a) A Partner is both an agent and a principal.

(b) He can, by his acts, bind other Partners and is in turn bound by acts of other Partners.

(c) It is not essential that all Partners should actively participate in business. Business may be managed by one or more Partners and remaining Partners will be bound by their acts provided such acts relate to carrying on Firm's business and have been done in the Firm's name.

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.

Question 67:-

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

- (i) Partnership at will
- (ii) Particular partnership

Answer:-

Partnership at will: According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:

1. No fixed period has been agreed upon for the duration of the partnership; and
2. There is no provision made as to the determination of the partnership. In simple words, there is no provision in the partnership deed as how partnership deed will come to end.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will. But, where there is an agreement between the partners either for the duration of the partnership or for the determination of the partnership, the partnership is not partnership at will.

Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'. A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

Question 68:-

Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

Answer:-

1. A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

2. Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

3. Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Question 69:-

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

Answer:-

1. Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not.
2. He is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner.
3. A nominal partner must give public notice of his retirement and his insanity is not a ground for dissolving the firm.

Question 70:-

What is Partnership Deed and state the information contained therein?

Answer:-

1. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership.

2. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.

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

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

5. Partnership deed may contain the following information: -

*Name of the partnership firm.

*Names of all the partners.

*Nature and place of the business of the firm.

*Date of commencement of partnership.

* Duration of the partnership firm.

* Capital contribution of each partner.

*Profit Sharing ratio of the partners.

* Admission and Retirement of a partner.

*Rates of interest on Capital, Drawings and loans.

* Provisions for settlement of accounts in the case of dissolution of the firm.

* Provisions for Salaries or commissions, payable to the partners, if any.

*Provisions for expulsion of a partner in case of gross breach of duty or fraud.

*A partnership firm may add or delete any provision according to the needs of the firm.

Question 71:-

State the differences between Partnership and Hindu Undivided Family.

Answer:-

Basis Of Difference	Partnership	Joint Hindu Family
Mode of creation	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a member	Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager has the authority to contract for the family business and the other members in the family.
Liability	In a partnership, the liability of a partner is unlimited.	In a Hindu Undivided Family only the liability of Karta is unlimited and the other co-partners are liable only to the extent of their share in the profits of the family business

Question 72:-

"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.

Answer:-

1. "Partner indeed virtually embraces the character of both a principal and an agent"
2. 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.
3. 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.
4. 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.
5. 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.

Question 73:-

M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2016, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th

January 2018, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

Examine whether action by the partners was justified or not?

Answer:-

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

Question 74:-

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

Answer:-

Insolvency [Sec. 34]:

- (a) When a Partner in a Firm is adjudicated insolvent, he ceases to be a Partner on the date of the order, irrespective of whether the Firm is dissolved or not.
- (b) When under a contract between the Partners, the Firm is not dissolved by the insolvency of a Partner, the estate of such Partner is NOT liable for any act of the Firm.
- (c) Also, further the Firm is NOT liable for any act of the insolvent, done after the date on which the order or adjudication is made.

Question 75:-

State the legal consequences of the Retirement of the Partner as per the provisions of the Indian partnership Act, 1932.

Answer:-

Retirement [Sec. 32]:

(a) **Modes of Retirement:** Partner may retire -

*With other Partner's consent,

*In accordance with an express agreement,

*By giving written notice of his intention to retire in a Partnership at will.

(b) **Liability:**

*Retiring Partner may be discharged from liability to any third party for acts of Firm done before his retirement by (a) an agreement made with such third party and the Partners of reconstituted Firm, or (b) implied from the course of dealing between the third party and reconstituted Firm after he had knowledge of the retirement.

*A retired Partner along with other Partners continues to be liable to third parties for acts done by any of them in the Firm name before retirement, until public notice is given of his retirement.

*A retired Partner is not liable to any third party who deals with the Firm without knowledge that he was a Partner.

(c) **Public Notice:** Can be given by - (a) Retired Partner, or (b) any Partner of reconstituted Firm.

Question 76:-

What do you mean by “implied authority” of the partners in a firm?

Answer:-

According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Question 77:-

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932.

Answer:-

LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)

The question of liability of partners to third parties may be considered under different heads. These are as follows:

1. **LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25):** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Example: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place. It was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. **LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26):** Where, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Example: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result, thereof, an injury was caused to a workman. The other partner was also held responsible for the same.

3. LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27):

Where-

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

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

Example: A, B, and C are partners of a place for car parking P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Analysis of section 27:

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

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

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

The firm would be liable in both the cases.

Question 78:-

Whether a minor may be admitted in the business of a partnership firm?

Answer:-

1. **Minor cannot become Partner:** Minor cannot enter in to a contract, and hence he generally cannot enter into Partnership.

2. **Minor into benefits of Partnership:** If all the Partners agree, a minor may be admitted to the benefits of an already existing Firm. There must be at least two major Partners before a Minor is admitted into the benefits of Partnership.

Question 79:-

Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs.50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.

Answer:-

Implied authority of a partner

Yes, as per sections 19 and 22 of the Indian Partnership Act, 1932, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business (within the implied authority of firm) and is done in a usual manner. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

Question 80:-

Shyam, Mohan and Keshav were partners in M/s Nandlal Gokulwale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from

heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932.

Answer:-

According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Further, according to Section 21, a partner has authority, in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss. Hence, this sale will bind the firm.

Question 81:-

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

Answer:-

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.

Question 82:-

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

Answer:-

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
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.
Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
Nature of interest	There is 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.
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.

Question 83:-

What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932?

Answer:-

Conduct of the Business (Section 12 of the Indian Partnership Act, 1932): Subject to contract between the partners-

- a) every partner has a right to take part in the conduct of the business;
- b) every partner is bound to attend diligently to his duties in the conduct of the business;
- c) any difference arising as to ordinary matters connected with the business may be decided by majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all partners; and
- d) every partner has a right to have access to and to inspect and copy any of the books of the firm.
- e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

Question 84:-

“Dissolution of a Firm is different from Dissolution of Partnership”. Discuss.

Answer:-

DISSOLUTION OF FIRM VS DISSOLUTION OF PARTNERSHIP

BASIS OF DIFFERENCE	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
Continuation of business	It involves discontinuation of Business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.

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

Question 85:-

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

Answer:-

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

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

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

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

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

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

*Embezzlement,

*Keeping erroneous accounts

*Holding more cash than allowed

*Refusal to show accounts despite repeated request etc.

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

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

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

*Deadlock in the management.

* Where the partners are not in talking terms between them.

*Loss of substratum.

* Gambling by a partner on a stock exchange.

Question 86:-

What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?

Answer:-

APPLICATION FOR REGISTRATION (SECTION 58):

(1) 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.

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

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

(4) 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.

Question 87:-

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

Answer:-

"Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: It means a Limited Liability Partnership-

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

Question 88:-

What are the Characteristic/Salient Features of LLP?

Answer:-

Characteristic/Salient Features of LLP

1. **LLP is a 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 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.

2. **Perpetual Succession:** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3. **Separate Legal Entity:** The LLP is a separate legal entity is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

4. **Mutual Agency:** Further, no partner is liable on account of the independent or unauthorized 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.

5. **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.

6. **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

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

8. **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

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

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

Question 89:-

Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.

Answer:-

Conditions under which LLP will be liable [Section 27(2) of the LLP Act. 2008]

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act. 2008]

A LLP is not bound by anything done by a partner in dealing with a person if-

- a) the partner in fact has no authority to act for the LLP in doing a particular act; and
- b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Question 90:-

ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires.

With reference to the same, briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

Answer:-

An act which is ultra vires the company being void, cannot be ratified even by the unanimous consent of all the shareholders of the company.

Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of memorandum of association as it becomes ultra vires and thus null and void.

Question 91:-

What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013.

Answer:-

Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.

- Operates under a special licence from Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to

*Converts its status and change its name

*Wind - up

*Amalgamate with another company having similar object.

- Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of Section 8 company.

Question 92:-

Explain the meaning of Guarantee Company?

Answer:-

Meaning of Guarantee Company: Section 2(21) of the Companies Act, 2013 defines a Company Limited by Guarantee as a company

- having the liability of its members
- limited by the memorandum

- to such amount
- as the members may respectively undertake
- to contribute
- to the assets of the company
- in the event of its being wound up.

Question 93:-

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

Answer:-

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

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

Question 94:-

"The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association.

Answer:-

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.

A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. (It cannot enter into a contract or engage in any trade or business, which is beyond the power conferred on it by the memorandum. If it does so, it would be ultra vires the company and void.)

Contents of the memorandum: The memorandum of a company shall state-

(a) the name of the company (Name Clause) with the last word "Limited" in the case of public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.

(b) the State in which the registered office of the company (Registered Office clause) is to be situated:

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause);

(d) the liability of members of the company (Liability clause), whether limited or unlimited

(e) the amount of authorized capital (Capital Clause) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.

(f) the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him. (Association Clause)

Question 95:-

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?

Answer:-

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.

*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 (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) OR OTHERWISE

- 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.

*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

Question 96:-

Explain clearly the doctrine of 'Indoor Management'

Answer:-

As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company.

Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly. It is a presumption and therefore rebuttable. Mange

Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company (provided he had actual knowledge of the memorandum and articles, and he complied with the requirements contained in the memorandum and articles).

Question 97:-

What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act, 2013?

Answer:-

Formation of companies with charitable purpose etc. (Section 8 company):

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

*promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

*promoting its objects and

*prohibiting the payment of any dividend to its members.

Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Question 98:-

What do you mean by the term capital? Describe its classification in the domain of Company Law.

Answer:-

The term capital has a variety of meanings. In relation to a company limited by shares, the word capital means share capital, i.e., the capital or figure in terms of so many rupees divided into shares of a fixed amount.

In other words, the contributions of persons to the common stock of the company form the capital of the company. The proportion of the capital to which each member is entitled is his share. A share is not a sum of money; it is rather an interest measured by a sum of money and made up of various rights contained in the contract.

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

1) "**Authorised capital**" or "**Nominal capital**": It means the Capital as is authorized by the MOA of a Company to be the maximum amount of Share Capital of the Company. [Sec.2(8)]

It is also known as registered capital of company upon which it pays the stamp duty.

It is usually fixed at the amount, which, it is estimated, the company will need, including the working capital and reserve capital, if any.

2) **Issued capital**: It means such Capital as the Company issues from time to time for subscription. [Sec.2(50)]. Issued Capital also includes Shares allotted for consideration other than cash.

It is that part of authorised capital which is offered by the company for subscription.

3) **Subscribed capital**: It means that part of the capital, which is for the time being subscribed by the members of a company.

It is the nominal amount of shares taken up by the public. Where any notice, advertisement or other social communication or any business letter, billhead or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.

Default in this regard will make the company and every officer who is in default liable to pay the penalty extending ₹10,000 and ₹5,000, respectively.

4) **Called-up capital:** It means the capital that has been called for payment. It is the total amount called upon the shares issued.

5) **Paid-up capital:** Paid-up capital is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

Question 99:-

Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of Rs. 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only Rs. 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.

Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence?

Answer:-

As per the facts stated in the question, Mr. X (drawer) issued the cheque to Mr. R for outstanding dues of Rs. 5,00,000 on 26/07/2022 with the postdated cheque of 1/08/2022. But on 29/07/2022, he made payment for his taxes and left with bank balance of Rs 4,50,000. Mr. X requested Mr. R not to present the cheque for payment. Later, he gave a stop payment request to the bank in respect of the cheque issued to Mr. R. Where any

cheque drawn by a person for consideration is returned by the bank unpaid because of the amount of money standing to the credit of that account is insufficient to honour the cheque such person shall be deemed to have committed an offence and shall be punishable. (Section 138)

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.

Question 100:-

Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.

Answer:-

Dormant Company (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 dormant company.