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LESSON-1

Q-1 What is the significance of the Supreme Court and High Court in the Indian judiciary? **(Module Q) (RTP Jan 25) (MTP June 24 Series 2) (MTP Sept 25 Series 2)**

Ans. **(i) Supreme Court**

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

(ii) High Court

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

Q-2 What do you understand by Law? Also, elaborate the procedure for making a Law? **(Module Q) (RTP Sept 24) (MTP Sept 24 Series 1) (MTP May 25 Series 1) (MTP Jan 25 Series 1) (MTP Sept 25 Series 1)**

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

The Process of Making a Law

- When a law is proposed in parliament it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

Q-3 Explain the types of laws in the Indian Legal System considering the Indian Regulatory Framework. **(6 Marks PYQ Sept 24) (RTP May 25) (MTP June 24 Series 1)**

Ans. **Laws in the Indian legal system could be broadly classified as follows:**

Criminal Law

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

Civil Law

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

Common Law

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

Principles of Natural Justice

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

Q-4 Describe in brief about the following Regulatory bodies of the Government of India: -

(i) Securities and Exchange Board of India

(ii) Reserve Bank of India

(iii) Insolvency and Bankruptcy Board of India
(6 Marks PYQ June 24) (MTP Jan 25 Series 2)

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

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

(ii) Reserve Bank of India (RBI):

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

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

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

Q-5 What do you understand by Indian Judicial System and what are its various functions? **(RTP June 24)**

Ans. Indian Judicial System is a branch which through the enforcement of Law resolves dispute between citizens or between citizens and the Government.

The functions of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,

- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

Indian Judicial System performs his functions through the hierarchy of courts, the Supreme Court is at the top, followed by the High Courts, District Courts and Metropolitan Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

Q-6 What is the structure of the Indian Judicial System, and what is the hierarchy of courts in India? **(MTP Sept 24 Series 2)**

Ans. When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.
The functions of judiciary system of India are:
• Regulation of the interpretation of the Acts and Codes,
• Dispute Resolution,
• Promotion of fairness among the citizens of the land.

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

(i) Supreme Court
The Supreme Court is the apex body of the judiciary. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India.

(ii) High Court
The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power.

(iii) District Court
Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.
Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

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

Magistrate of the first class.

Q-7 Write a short note on the following:
(i) Ministry of Corporate Affairs (MCA)
(ii) Ministry of Home Affairs
(MTP June 24 Series 3)

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

(ii) Ministry of Home Affairs: It is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

Q-8 Ashok and Vimal are pursuing chartered accountancy course and discussing about the structure of the Indian judicial system. Explain them the functions of judiciary system of India and the hierarchy of courts and briefly explain their functioning under the Indian Regulatory Framework. **(6 Marks PYQ Jan 25)**

Ans. **The functions of judiciary system of India are:**
- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

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

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

(ii) High Court: The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction.

However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

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

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

Q-9 i. Describe the major functions and specialised divisions of the Reserve Bank of India (RBI). How does it contribute to India's economic development? **(RTP Jan 26)**

ii. Explain the key responsibilities and organizational structure of the Ministry of Corporate Affairs (MCA). Highlight the legislative acts it administers and the role of the ICLS cadre. **(MTP May 25 Series 2)**

Ans. **i. Reserve Bank of India-**

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

ii. Ministry of Corporate Affairs (MCA)

a) MCA is an Indian Government Ministry.
b) It is primarily concerned with administration of the Companies Act 2013, the

Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

c) It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

d) The Ministry is mostly run by civil servants of the ICLS cadre.

e) These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.

f) The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

Q-10 Explain in brief the important functions played by the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law and Justice in enforcing the law in India. **(6 Marks) (PYQ May 25)**

Ans. **The Ministry of Finance**

- The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- One of the important functions of the Finance Ministry is the presentation of the Union Budget. This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.

The Ministry of Corporate Affairs

- The Ministry of Corporate Affairs is an Indian Government Ministry.
- It is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- It is responsible mainly for the regulation of Indian enterprises in the industrial and services

sector.

The Ministry of Law and Justice

- The Ministry of Law and Justice in the Government of India is a Cabinet Ministry
- It deals with the
  a. management of the legal affairs, through the Department of Legal Affairs
  b. legislative activities through the Legislative Department
  c. administration of justice in India through the Department of Justice

• The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

Q-11 Explain the hierarchical structure of the Indian Judicial System. Describe the powers and functions of the Supreme Court, High Courts, District Courts and Metropolitan Courts.

Ans. **Hierarchical Structure of the Indian Judicial System**

The hierarchical structure of the Indian Judicial System comprised of the Courts for dispute redressal between citizens or between citizens and the Government. Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of the Supreme Court is the final word on the matter and therefore are binding on all High Courts under Article 141 of the Indian Constitution. Whereas decisions of a High Court are binding in the respective state but are only persuasive in other states.

Following are the Powers & the Functions of various courts under the Indian Judicial System.

(i) Supreme Court

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

(ii) High Court

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

(iii) District Court

Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.

On the basis of a pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore. On the basis of territorial

Jurisdiction i.e. courts have power to control the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

(iv) Metropolitan courts

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

Q-12 Define Law and explain various sources of Law. **(6 Marks PYQ Sep 2025)**

Ans. **What is Law?**

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

Sources of Law

The main sources of law in India are:

(i) the Constitution,

(ii) the Statutes or Laws made by Parliament and State Assemblies,

(iii) Precedents or the Judicial Decisions of various Courts and in some cases, established Customs and Usages.

The elected representatives of the people to the Parliament and to the Legislative Assemblies of various States make laws in the Parliament or in the State Assemblies.

The Constitution of India, 1950 is the foremost law that deals with the framework within which our democratic system works, and our laws are made for the people, by the people. The Constitution also provides for and protects certain Fundamental Rights of citizens.

It also lays down Fundamental duties as well as the powers and duties of Governments, both Central and State. The laws in India are interconnected with each other forming a hybrid legal system.

The people who wrote the Constitution decided to divide the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List. A matter would become the subject matter for Central Law or a State Law depending on the List.

PRABJOT SINGH

LESSON-2

UNIT – 1: NATURE OF CONTRACTS

Q-1 "All contracts are agreements, but all agreements are not contracts". Comment. **(Module Q)**

Ans. An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract.

All contracts are agreements: For a contract there must be two things
(a) an agreement and (b) enforceability by law.

Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements. Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

Q-2 A sends an offer to B to sell his second-car for ` 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? **(Module Q)**

Ans. Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance.

So, in the given problem, if B remains silent, it does not amount to acceptance. The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.

Q-3 Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

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

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

(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. **(Module Q) (RTP Sept 24)**

Ans. (i) It is an implied contract and A must pay for the services of the coolie detailed by him.
Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

(ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.
Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

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

Q-4 Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872. **(Module Q)**

Ans. Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

Q-5 State whether there is any contract in following cases:
(a) A engages B to do certain work and remuneration to be paid as fixed by C.
(b) A and B promise to pay for the studies of their maid's son
(c) A takes a seat in public bus.
(d) A, a chartered accountant promises to help his friend to file his return. **(Module Q)**

Ans. (a) It is a valid express contract

(b) It is not a contract as it is a social agreement
(c) It is an implied contract. A is bound to pay for the bus fare.
(d) It is a social agreement without any intention to create a legal relationship.

Q-6 Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages? **(Module Q)**

Ans. No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him.
In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract.

Q-7 A mobile phone was displayed in a shop with a price tag of `10,000 attached to the mobile display box. As the price displayed was very less as compared to M.R.P. of the mobile phone, Y, a customer rushed to the cash counter and asked the shopkeeper to receive the payment and pack up the mobile phone. The shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone. Y seeks your advice whether he can sue to shopkeeper for the above cause under the Indian Contract Act, 1872. **(3 Marks PYQ Dec 23)**

Ans. An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer.
Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Y reaches to shop and selects a Mobile Phone with a price tag of ` 10,000 but the shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone.

On the basis of above provisions and facts, the price tag with the Mobile Phone was not offer. It is merely an invitation to offer. Hence, it is Y who is making the offer and not the shopkeeper. Shopkeeper has the right to reject Y's offer. Therefore, Y cannot sue the shopkeeper for the above cause.

Q-8 Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited ` 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.
Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? **(4 Marks PYQ June 23)**

Ans. As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be

an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

Q-9 Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872. **(5 Marks PYQ June 23) (RTP May 25) (MTP May 25 Series 1)**

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

Basis	**Void Contract**	**Voidable Contract**
Meaning	A Contract which ceases to be enforceable by law becomes void 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 change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
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.

Q-10 X agrees to pay Y ` 1,00,000/-, if Y kills Z. To pay Y, X borrows ` 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

(i) Between X and Y.

(ii) Between X and W **(4 Marks PYQ Nov22) (MTP Jan 25 Series 1)**

Ans. Illegal Agreement: It is an agreement which the law forbids to be made. As an essential

condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

(i) X agrees to give ` 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.

(ii) X borrows ` 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

Q-11 Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872? **(RTP June 24)**

Ans. As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or by his authorized agent. Communication of acceptance by third person cannot be concluded as valid acceptance.

In the instant case, Mr. Parth applied for a job as principal of a school and one member of the school management committee privately informed Mr. Parth that he was appointed. Later, the management of the school appointed someone else as a principal.

On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment.

Q-12 Ashok goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of ` 40,000 after a discount of ` 3000. Ashok reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ` 43,000." Ashok got angry and insists for ` 40,000. State with reasons whether under Indian Contract Act, 1872, Ashok can enforce the cashier to sell at discounted price i.e. ` 40,000. **(MTP Sept 24 Series 2)**

Ans. An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.
In the instant case, Ashok reaches to super market and selects a Air Conditioner with a discounted price tag of ` 40,000 but cashier denied to sell at discounted price by saying that

discount is closed from today and request to make full payment. But Ashok insists to purchase at discounted price.
On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashok who is making the offer not the super market. Cashier has right to reject the Ashok's offer. Therefore, Ashok cannot enforce cashier to sell at discounted price.

Q-13 Mr. A offered to sell 25 chairs to Mr. B @ ` 1,500 per chair on 12.02.2024. A promised B that he would keep the offer open till 15.02.2024. However, on 13.02.2024, he sold those chairs to Mr. C @ ` 1,700 per chair without the knowledge of B. Mr. B communicated the acceptance of the above offer on 14.02.2024.
Advise, with reference to provisions of the Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A? **(2 Marks PYQ Sept 24)**

Ans. In terms of Section 5 of the Indian Contract Act, 1872, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.
Accordingly, an offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.
In the instant case, B cannot claim damages from A because the offer made by A is a mere offer and it can be withdrawn whenever A desires.

Q-14 On the basis of the mode of formation, contracts can be classified into different types. Explain the various kinds of contracts, namely:

1. Express Contracts
2. Implied Contracts (including Tacit Contracts)
3. Quasi-Contracts
4. E-Contracts **(6 Marks) (MTP Sept 25 Series 2)**

Ans. **On the basis of the formation of contract**

1. Express Contracts: A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Indian Contract Act, 1872 provides that if a proposal or acceptance of any promise is made in words, the promise is said to be express. **3. Quasi-Contract:** A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The

2. Implied Contracts: Implied contracts in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Tacit Contracts: The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].

3. Quasi-Contract: A quasi-contract is not an actual contract, but it resembles a contract. It is created by law under certain circumstances. The

law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

4. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through ED1 - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

Q-15 Mr. Naman is an auctioneer. He advertised in a leading newspaper that an auction would be held on 17th April, 2025, in Agra for the sale of some office furniture. Mr. Kanha read the advertisement and travelled about 500 kilometres to attend the auction. When he reached the place of the auction, he found that the furniture had been withdrawn from the sale. Mr. Kanha sued Mr. Naman for the loss of his time and expenses.
State, with reasons, whether Mr. Kanha can claim compensation from Mr. Naman under the provisions of the Indian Contract Act, 1872. **(RTP Jan 26)**

Ans. According to the Indian Contract Act, 1872, an invitation to offer is different from offer. Quotation catalogues, advertisements in newspaper for sale are not offer. These are invitations to public to make an offer. Bidding in an auction is also an invitation to offer. When goods are sold through auction, the auctioneer does not contract with anyone who attends the sale. It was decided in case of Harris vs. Nickerson that the advertisement auction was merely a declaration to inform potential purchasers that the sale was taking place. It was not an offer to contract with anyone.

In the instant case, Mr. Naman advertised for sale of some office furniture in an auction on 17th April, 2025 in Agra for sale of some office furniture. Mr. Kanha read the advertisement and travelled about 500 kilometres to attend the auction, but he found that furniture was withdrawn from the sale. Mr. Kanha sued against Mr. Naman for loss of his time and expenses.

On the basis of above provisions and facts, advertisement of auction by Mr. Naman is not an offer but merely in invitation to offer. He is not liable to Mr. Kanha. Hence, Mr. Kanha could not succeed in his suit.

Q-16 With reference to provisions of the Indian Contract Act, 1872, analyse the given situations and answer each of the following questions:

(i) Mr. X visited a Cosmo Mega Mall at Nagpur, which has a variety of items for day-to-day use. The mall has a self-service system. Mr. X took a basket, picked up ten different items of his choice, and reached the cashier for payments. The cashier accepted the price of nine items but did not accept the price of remaining one item which was at the highest price of ` 10,050/- among the ten items.
Decide as per the provisions of the Indian Contract Act, 1872 whether the Cosmo Mega Mall be compelled to sell the said article to Mr. X. **(4 Marks PYQ Sep 2025)**

(ii) Mr. AT completed his M. Tech. qualification in April 2022. He got married with Ms. Priya in November 2022. He got an appointment as Technical Consultant in a very renowned company in USA on 2nd February 2023. He promised his wife that he will send ` 30,000/- per month for her daily routine expenses. Mr. AT went to USA on 25th October 2023. He never sent any money to his wife. Mrs. Priya was not in a position to meet her daily expenses. She was facing severe financial issues regarding rent and other maintenance expenses. On 20th March 2024 during her telephonic discussion with Mr. AT, she came to know that he would never send her money. Due to her financial hardships, she decided to file a suit against him for ` 7,50,000/-. Whether Mrs. Priya would be able to recover the above amount according to provisions of the Indian Contract Act, 1872? **(3 Marks PYQ Sep 2025)**

Ans. (i) Invitation to Offer: The offer should be distinguished from an invitation to offer. In terms of Section 2(a) of the Indian Contract Act, 1872, an offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it.

Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of items with a price in it in a self-service system is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

In this case, Mr. X by selecting some items and approaching the cashier for payment simply made an offer to buy the items selected by him. If the cashier does not accept the price, Mr. X cannot compel him to sell. Accordingly, in view of the above, Mr. X cannot compel the Cashier / Cosmo Mega Mall to sell the 10th article.

(ii) As per Section 2(h) of the Indian Contract Act, 1872 a contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation which means duly enforceable by law.

As per Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given case, Mr. AT and Mrs. Priya had not entered into an agreement which is legally enforceable by law. As per the facts of the case, Mr. AT agreed to pay to his wife Mrs. Priya ` 30,000 per month while he was abroad. Mr. AT failed to pay the promised amount. Mrs. Priya sued him for the recovery of the amount.

In view of the above, Mrs. Priya cannot recover any amount as it was a social agreement and the parties did not intend to create any legal relationships.

UNIT – 2: CONSIDERATION

Q-1 "To form a valid contract, consideration must be adequate". Comment. **(Module Q)**

Ans. The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (Bolton v. Modden). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Q-2 Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 for ` 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 a decide upon Mr. Chotelal's plan of action? **(Module Q)**

Ans. Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.

The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.
Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties

affecting land, the covenant affecting the land may be enforced by the successor of the seller."

In such a case, third party to a contract can file the suit although it has not moved the consideration.
Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

Q-3 Mr. A was running an orphanage. His friend Mr. S, a philanthropist agreed to donate ` 2 lakh for treatment of a child, who was suffering from cancer. On emergency, Mr. A incurred ` 1.5 lakh on treatment of child. Now, Mr. S refused to pay. Whether Mr. A can claim ` 1.5 lakh from Mr. S with reference to provisions of the Indian Contract Act, 1872? **(2 Marks PYQ Sept 24) (MTP Jan 25 Series 2)**

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

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

Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.
In the instant case, Mr. A can claim 1.5 lakh from Mr. S.

Q-4 Explain the following statements in the light of provisions of Indian Contract Act, 1872:
(i) "Agreements made out of love and affection are valid agreements."
(ii) "Promise to pay a time barred debt cannot be enforced." **(7 Marks PYQ Nov 22) (RTP Jan 25)**

Ans. (i) Agreements made out of love and affection are valid agreements: A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

(A) It must be made out of natural love and affection between the parties.
(B) Parties must stand in near relationship to each other.
(C) It must be in writing.
(D) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

(ii) Promise to pay a time barred debt cannot be enforced: According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration.
Hence, this statement is not correct.
Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that

contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

Q-5 Mr. Sanjay Kothari was a big businessman having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met an accident, and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? **(RTP June 24) (MTP Sept 24 Series 1)**

Ans. Section 25 of the Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.
In the instant case, the transfer of house made by Mr. Sanjay Kothari on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable, and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

Q-6 What are the conditions need to be fulfilled to make the following agreements valid without consideration as per the provisions of the Indian Contract Act, 1872?

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

(i) It must be made out of natural love and affection between the parties.
(ii) Parties must stand in near relationship to each other.
(iii) It must be in writing.
(iv) It must also be registered under the law.

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

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

Q-7 Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872. **(MTP Sept 24 Series 2) (MTP June 24 Series 3)**

Ans. **Consideration [Section 2(d) of the Indian Contract Act, 1872]**
"When at the desire of the promisor, the promise or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or

abstinence or promise is called consideration for the promise".

The essential characteristics of a valid consideration are as follows:

(1) Consideration must move at the desire of the promisor.
(2) It may proceed from the promisee or any other person on his behalf.
(3) It may be executed or executory. It may be past, present or future.
(4) It must be real and have some value in the eyes of law.
(5) It must not be something which the promisor is already legally bound to do.
(6) It must not be unlawful, immoral or opposed to public policy.
(7) Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.

Q-8 As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872. **(7 Marks PYQ June 23)**

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

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/arrangements, a provision may be made for the benefit of a person, who may file a suit though he is not a party to the agreement.
(4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.
(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.

Q-9 Shri Shivay Temple Trust decided to get renovation of the temple under trust. For this purpose, the President of the trust discussed the budget with contractor. The contractor

provided the budget of ` 5,00,000. After gaining enough membership to support the funds required renovating the temple, the committee entered in a contract with contractor for renovation. The plans for the proposed structure were submitted and passed. But as the membership list increased, the plans also expanded. Hence, the expected cost of construction is increased from ` 5,00,000 to ` 7,00,000. Now, increased amount of ` 7,00,000 stayed approved and obligated by the committee and contractor. Renovation work was completed, and contractor demanded the payment from committee. Meanwhile, new members who promised to contribute did not turnup. President had filed the suit against the members who promised to contribute. Members denied on the views that their contract with committee to contribute was without any consideration hence invalid. State with reason whether committee will succeed under the provisions of the Indian Contract Act, 1872? **(RTP May 25)**

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

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

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

Q-10 Abhimanyu, a businessman, lost his important documents at a crowded railway station. Ramesh, a passerby, voluntarily collected the documents and returned them safely to Abhimanyu without expecting any reward. A week later, impressed by Ramesh's honesty, Abhimanyu wrote and signed a promise to pay him `50,000 as a reward. Later, Abhimanyu refused to pay, arguing that the act had already been performed voluntarily and therefore did not constitute valid consideration. Ramesh filed a case claiming that the promise was binding. Decide, under the Indian Contract Act, 1872, whether Abhimanyu is liable to pay. **(RTP Jan 26)**

Ans. Section 2(d) of the Indian Contract Act, 1872 defines consideration as an act or abstinence done at the desire of the promisor, which has already been done, is being done, or is promised to be done by the promisee or any other person.

Section 25(2) specifically provides that a promise made in writing and signed by the promisor to compensate a person who has voluntarily done something for the promisor is enforceable, even without fresh consideration. Thus, although the original act was voluntary, once a subsequent written promise is made, it becomes binding.

In the present case, Ramesh voluntarily returned Abhimanyu's lost documents. At that time, no enforceable contract existed because the act was not done at Abhimanyu's request. Subsequently, Abhimanyu made a written promise to pay `50,000 to Ramesh as a token of appreciation. Later, Abhimanyu refused to fulfil his promise.

Here, the promise made by Abhimanyu in writing to compensate Ramesh for past voluntary services is valid and enforceable. Therefore, Ramesh is entitled to receive `50,000 and Abhimanyu is legally bound to pay.

UNIT – 3: OTHER ESSENTIAL ELEMENTS OF A CONTRACT

Q-1 "An agreement, the meaning of which is not certain, is void". Discuss **(Module Q)**

Ans. Agreement - the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable ofbeing made certain, the agreement is valid. For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

Q-2 "Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss. **(Module Q)**

Ans. Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

Q-3 A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher? **(Module Q)**

Ans. Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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

A person is deemed to be in position to dominate the will of another:
(a) Where he holds a real or apparent authority over the other; or
(b) Where he stands in a fiduciary relationship to the other; or
(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Q-4 Explain the concept of 'misrepresentation' in matters of contract. 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 few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract? **(Module Q)**

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

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

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

Q-5 Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ` 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying ` 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. **(Module Q)**

Ans. As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 18, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract in the above ground.

Q-6 Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ` 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ` 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872. **(Module Q)**

Ans. According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

Q-7 Whether the threat to commit suicide is coercion? **(2 Marks PYQ Sept 24)**

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

Q-8 Explain the term Wagering agreement in the light of the Indian Contract Act, 1872. Also, explain some transactions resembling with wagering transaction but which are not void. **(6 Marks PYQ June 24) (MTP Jan 25 Series 1)**

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

Transactions resembling with wagering transaction but are not void

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

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

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

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

Q-9 Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872. **(7 Marks PYQ Dec 23) (MTP Sept 24 Series 2)**

Ans. Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

(1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice, therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.
Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

Q-10 "Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872. **(5 Marks PYQ Dec 23)**

Ans. Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud. It is a rule of law that mere

silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

(i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

(ii) Where the silence is, in itself, equivalent to speech.

Q-11 Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872 **(2 Marks PYQ June 23) (MTP June 24 Series 3)**

Ans. According to section 16 of the Indian Contract Act, 1872, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.
When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

Q-12 Paridhee, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Mittal, owner of MP Laptops, for purchase of Laptop on credit amounting ` 60,000/- on 1st August 2022. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2023. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Paridhee was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.
She will be a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

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

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

(iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority? **(RTP Jan 25)**

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

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

(ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.

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

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

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

Q-13 State with reason(s) whether the following agreements are valid or void as per the Indian Contract Act, 1872:

(i) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.

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

(iii) X, a physician and surgeon, employs Y as an assistant on a salary of ` 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. **(RTP Jan 25)**

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

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

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

Q-14 Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to Mr. Shyam, to apply for voluntary

retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ` 10 Lakhs as consideration to Mr. Shyam to induce him to retire.
Mr. Shyam refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.
Whether the above agreement is valid? Explain with reference to provision of the Indian Contract Act, 1872? **(RTP Sept 24)**

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

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

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

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

Q-15 Sahil sells by auction to Rohan a horse which Sahil knows to be unsound. The horse appears to be sound, but Sahil knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

(A) If Sahil says nothing about the unsoundness of the horse to Rohan.

(B) If Sahil says nothing about it to Rohan who is Sahil's son.

(C) If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound." Sahil says nothing. **(MTP Sept 24 Series 1)**

Ans. According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.
Hence, in the instant case,

(A) This contract is valid since as per section 17, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.

(B) This contract is not valid since as per section 17, it becomes Sahil's duty to tell Rohan about the unsoundness of the horse because a fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud.

(C) This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud.

Q-16 Mr. Vikas a businessman has been fighting a long-drawn litigation with Mr. Neeraj an industrialist. To support his legal campaign, he enlists the services of Mr. Manoj a Judicial officer stating that the amount of `10 lakhs would be paid to him if he does not take up the brief of Mr. Neeraj. Mr. Manoj agrees but, at the end of the litigation Mr. Vikas refuses to pay to Mr. Manoj. Decide whether Mr. Manoj can recover the amount promised by Mr. Vikas under the provisions of the Indian Contract Act, 1872? **(MTP June 24 Series 3)**

Ans. The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872. Hence, Mr. Manoj in the given case cannot recover the amount of ` 10 lakh promised by Mr. Vikas because it is a void agreement and cannot be enforced by law.

Q-17 Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. **(MTP June 24 Series 2)**

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

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent

According to Section 18, there is misrepresentation:

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

Distinction between fraud and misrepresentation:

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

Q-18 Kashish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of Indian Contract Act, 1872? **(MTP June 24 Series 1) (MTP May 25 Series 1)**

Ans. According to Section 27 of Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

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

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

Q-19 Examine the validity of the following agreements under the provisions of the Indian Contract Act, 1872 and justify your answer:

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

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

(iii) Rishabh sells the goodwill of his shop to Omkar for ` 10,00,000 and promises not to carry on such similar business within the local limits so long as Omkar carries on like business.

(iv) A property worth ` 2,00,000 was agreed to be sold for just ` 25,000 by a person of unsound mind. **(7 Marks) (PYQ Jan 25) (MTP May 25 Series 2) (MTP Sept 25 Series 1)**

Ans. (i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.
In the instant case, the agreement to pay ` 10,000 in exchange for a service (providing information about prospective grooms) is lawful.
Hence, the agreement is valid.

(ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.
In the instant case, the bull's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract.
Hence, the agreement is void.

(iii) Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
In the instant case, the restriction is limited to the local area and does not extend indefinitely.
Hence, the agreement is valid.

(iv) According to section 12, a contract by a person who is not of sound mind is void.
In the instant case, a property worth ` 2,00,000 was agreed to be sold for just ` 25,000 by a person of unsound mind.
Hence, the agreement is void.

Q-20 What are the agreements which are held to be opposed to public policy under the Indian Contract Act, 1872. Explain any 6 such agreements. **(6 Marks) (PYQ Jan 25)**

Ans. Some of the agreements which are held to be opposed to public policy are-
(1) Trading with enemy: Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed

to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

(2) Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.
Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

(3) Maintenance and Champerty: *Maintenance* is an agreement in which a person promises to maintain suit in which he has no interest.
Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.
(a) It is unreasonable so as to be unjust to other party or
(b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

(4) Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

(1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

(5) Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

(6) Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

(7) Interference with the course of justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy.

(8) Interest against obligation: The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

(1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

(2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ` 200,000 privately; the agreement is void.

(9) Consideration Unlawful in Part: By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

Q-21 Explain with reference to the Indian Contract Act, 1872:

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

(ii) When a party is deemed to be in a position to dominate the will of another. **(6 Marks) (PYQ Jan 25)**

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

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

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

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

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

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

Q-22 Sahil deals in pre-owned cars. Raju sold his accidental car to Sahil by fraud. Sahil could not find that the car was accidental. Akshay, a customer visited the workshop of Sahil with intention to purchase a pre-owned car. Akshay informed Sahil his intention with the condition that car should be free from any accident. Sahil sold that car to Akshay on erroneously believing that car did not face any accident. Afterward, Akshay found that the car was actually an accidental case. He sued Sahil to avoid the contract and also for damages for expenses suffered on car. Taking into account the provisions of the Indian Contract Act, 1872, state whether Akshay was eligible to avoid the contract and to claim damages from Sahil? **(RTP May 25)**

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

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

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

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

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

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

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

Q-23 Rohan of 17 years has purchased a mobile of ` 25,000 for his online classes from Mobile Sales Centre on credit. On due date, he did not make the payment of mobile. Mobile Sales Centre sued Rohan and his parents for the price of mobile. Rohan has ` 15,000 as his cash balance but his father has enough money to pay the price of mobile. Examine the given situation and answer who will be liable to pay the price of mobile as per the provisions of the Indian Contract Act, 1872? **(RTP Sept 25)**

Ans. Section 11 of the Indian Contract Act, 1872 provides that a minor is not capable to enter into a contract. A contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessaries out of his assets. Minor is not personally liable even for necessaries.

In the instant case, Rohan, a minor, purchased a mobile worth ` 25,000 for his studies on credit from Mobile Sales Centre. Mobile Sales Centre sued Rohan and his parents for recovery of the price. Rohan has total ` 15,000 as his cash balance as his assets.

On the basis of the facts of the problem, parents of Rohan are not liable for the price of mobile. Rohan's assets are liable to make the payment of price. Hence, the Mobile Sales Centre can recover only `15,000 from Rohan i.e. equal to his assets.

Q-24 (i) Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida, one at Block A and another at Block D. She also entered in contract with Sakshi to letout the flat at

Block D. At the time of entering into contract, both Tanishka and Sakshi were unaware that Block D is completely destroyed due to earthquake. Afterwards knowing the facts Sakshi requested to transfer the contract in favour of flat at Block A. In the light of provisions of the Indian Contract Act, 1872, whether Tanishka is liable to handover the possession of flat at Block A in place of Block D? **(4 Marks)**

(ii) Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. **(3 Marks) (MTP Sept 25 Series 2)**

Ans. (i) Section 20 of the Indian Contract Act, 1872 provides, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void. Bilateral mistakes may be as to the quality, existence, identity, title, price or quantity of the subject matter.

In the instant case, Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida in Block A and Block D. She also entered in contract with Sakshi to letout the flat at Block D. But at that time the Block D was completely damaged by earthquake unknown to both Tanishka and Sakshi. Sakshi demanded the possession of flat at Block A.

Here, the matter discussed in above problem is concerned with bilateral mistake. As in case of bilateral mistake, contract is void, both Tanishka and Sakshi are not bound with this contract. Hence Sakshi cannot demand the possession of flat at Block A from Tanishka.

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

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

Q-25 Vikas, a businessman from Delhi, entered into an agreement with Reddy, a trader from Hyderabad, to smuggle a large consignment of gold into India in violation of customs laws. As per the terms, Reddy would arrange the smuggling operation, while Vikas promised to provide financial support and safe storage facilities. Both agreed to share the profits equally. The agreement also stated that Reddy would invest a portion of his profit in Vikas's legitimate textile business, which was a lawful activity.
After the first successful operation, a dispute arose between the parties. Vikas received the smuggled gold but refused to share the profits, arguing that the agreement was unlawful. Reddy filed a suit for enforcement, claiming that at least the lawful portion of the agreement relating to the textile business should be upheld. Decide whether the agreement is enforceable under the Indian Contract Act, 1872? **(RTP Jan 26)**

Ans. Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is (a) forbidden by law, (b) defeats the provisions of any law, (c)

fraudulent, (d) involves injury to person or property, (e) immoral, or (f) opposed to public policy. Any agreement with such an object is void.
Smuggling of gold is expressly prohibited by Customs Law in India and is a criminal offence. Therefore, any contract to undertake smuggling is not only unlawful but also opposed to public policy, since Courts will not enforce agreements that encourage illegal trade.

Section 24 further provides that if any part of a single consideration or object is unlawful, the entire agreement is void. Only when the lawful and unlawful parts can be separated may the lawful portion be enforced. If the two are inseparable, the entire contract fails.

In this case, the main object of the agreement between Mr. Vikas and Reddy was to smuggle gold, which is forbidden by law and opposed to public policy. This makes the primary agreement void. Even though the agreement also included a clause that profits from smuggling would later be invested in Mr. Vikas's legal textile business, the lawful part is not separable from the unlawful part because the investment depended entirely on the profits derived from the illegal act.

Hence, the agreement between Mr. Vikas and Reddy is void under Sections 23 and 24 of the Indian Contract Act, 1872. The object of the contract (smuggling) is forbidden by law and opposed to public policy, and the lawful portion (investment in textiles) cannot be separated from the unlawful part. Therefore, Reddy cannot enforce either the smuggling profits or the investment clause. In law, no rights or obligations can arise out of an unlawful agreement.

Q-26 Consent is said to be free when it is not caused by 'Fraud'. According to provisions of the Indian Contract Act, 1872, answer each of the following:

(i) What do you mean by 'Fraud'?

(ii) What would be effect of fraud upon validity of a contract and state the instances in which a contract is not voidable? **(6 Marks PYQ Sep 2025)**

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

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

(ii) Effect of Fraud upon validity of a contract: When the consent to an agreement in caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

(1) He can rescind the contract within a reasonable time.

(2) He can sue for damages.

(3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Exception: In the following cases, contract is not voidable:

(i) If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.

(ii) A fraud which did not cause the consent of the party to agreement.

UNIT – 4: PERFORMANCE OF CONTRACT

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

(i) Y can recover the contribution from X and Z,

(ii) Legal representatives of X are liable in case of death of X,

(iii) Y can recover the contribution from the assets, in case Z becomes insolvent. **(Module Q)**

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

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

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

As per the provisions of above sections,

(i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.

(ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.

(iii) Y also can recover the contribution from Z's assets.

Q-2 Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ` 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.
On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?
Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father? **(Module Q)**

Ans. A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

(i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.

(ii) 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.

Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

Q-3 Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for ` 5,00,000/- within a period of three months. A security amount of ` 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of ` 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.
Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period. **(Module Q)**

Ans. In terms of the provisions of 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.

Referring to the above provision, we can analyse the situation as under.
The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car.

Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.

Q-4 Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2022. (i) ` 12,120 which was due in May 2018. (ii) ` 5,650 which was due in August 2020 (iii) ` 9,680 which was due in May 2021. Mr. Murari made payment on 1st April 2022 as below without any notice of how to appropriate them:

(i) A cheque of ` 9,680

(ii) A cheque of ` 15,000

Advice under the provisions of the Indian Contract Act, 1872. **(Module Q)**

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

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of `9,680 will be appropriated against the bill of ` 9,680 which was due in May 2019.

Cheque of ` 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

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

Q-5 What will be rights with the promisor in following cases? Explain with reasons:

(a) Mr. X promised to bring back Mr. Y to life again.

(b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached A on 19th March.

(c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. **(Module Q)**

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

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

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

(d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

Q-6 Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woollen clothes for men, women and kids like sweaters, monkey caps, mufflers; woollen coats, hand gloves etc. before the commencement of the winter season.

The agreement expressly provides that the woollen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing the situation and answer the following questions in light of the provisions of the Indian Contract Act, 1872:

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

(B) Whether company can accept the total supply on request of women group? **(3 Marks PYQ Sept 24)**

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

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

In the instant case,

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

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

Q-7 Mr. J entered into an agreement with Mr. S to purchase his house for ` 20 lakh, within three months. He also paid ` 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.
Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid. **(4 Marks PYQ June 24) (MTP Jan 25 Series 2)**

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

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

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

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

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

Q-8 T owes G, the following debts as per the table given below:

Amount of the Debt (in `)	Position of Debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

(i) A cheque of ` 12,500

(ii) A cheque of ` 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt. **(4 Marks PYQ Dec 23)**

Ans. As per the provisions of Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

As per the provisions of Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.
Since one of the issued cheques was exactly the amount of the debt due i.e. of `12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of ` 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.
Hence cheque of ` 12,500 will be appropriated against the debt of ` 12,500 which is due on 1st April, 2022.

As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of ` 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, `2,500 will be appropriated for the first debt and ` 1,500 will be appropriated towards the second debt.

Q-9 Mr. S promises Mr. M to paint a family picture for ` 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M on 15th March, 2023 against a payment of ` 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation? Decide as per the provisions of the Indian Contract Act, 1872. **(4 Marks PYQ June 23) (MTP June 24 Series 3)**

Ans. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. S had promised to deliver some photographs to Mr. M, the legal representatives of Mr. S shall be bound to deliver the photographs in this situation.

Q-10 Differentiate between Novation and Alteration as per the Indian Contract Act, 1872.**(5 Marks PYQ Nov 22)**

Ans. Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. Still there is a difference between these two.

1. Meaning: Novation means substitution of an existing contract with a new one. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties.
2. Change in terms and conditions and parties: Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
3. Substitution of new contract: In case of novation, there is altogether a substitution of new contract in place of the old contract. But in case of alteration, it is not essential to substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.

Q-11 Mr. Sohan, a wealthy individual provided a loan of ` 80,000 toMr. Mukesh on 26th February, 2023. The borrower, Mr. Mukesh asked fora further loan of ` 1,50,000.
Mr. Sohan agreed but provided the loan in parts on different dates. He provided ` 1,00,000 on 28th February, 2023 and remaining ` 50,000 on3rd March, 2023.
On 10th March, 2023 Mr. Mukesh while paying off part ` 75,000 to Mr.Sohan insisted that the lender should adjust ` 50,000 towards the loantaken on 3rd March, 2023 and balance as against the loan on26th February, 2023.
Mr. Sohan objected to this arrangement and asked the borrower toadjust in the order of date of borrowal of funds.

Now you decide:

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

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

(iii) What would be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist on any order of adjustment on their part? **(RTP Jan 25)**

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

(i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
Therefore, the contention of Mr. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.

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

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

(iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately. Hence in case where neither Mr. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

Q-12 (i) Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

(ii) Mr. Sooraj promises Mr. Manoj to paint a family picture for ` 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ` 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872. **(RTP June 24)**

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

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. Ayush and Mr. Bobby is voidable at the option of Mr. Bobby as it was induced by undue influence by Mr. Ayush and therefore Mr. Bobby can sue Mr. Ayush.

(ii) The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. Sooraj had promised to deliver some photographs to Mr. Manoj, the legal representatives of Mr. Sooraj shall be bound to deliver the photographs in this situation.

Q-13 What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:

(a) Sunil promised to bring back Jatin to life again.

(b) Aman agreed to sell 50 kgs of apples to Raman. The loaded truck left for delivery on 15th March but due to riots in between reached Raman on 19th March due to which the apples were rotten.

(c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. **(RTP Sept 24)**

Ans.

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

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

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

(d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

Q-14 Explain any five circumstances under which contracts need not be performed with the consent of both the parties. **(RTP Sept 24) (MTP June 24 Series 1)**

Ans. Under following circumstances, the contracts need not be performed with the consent of both the parties:

(i) Novation: Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)

(ii) Rescission: A contract is also discharged by recission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)

(iii) Alteration: Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)

(iv) Remission: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)

(v) Rescinds voidable contract: When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.

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

Q-15 Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2024, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ` 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2024 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2024 for which Mr. Vikas did not agree. On 1st August, 2024, Mr. Gaurav claimed compensation of ` 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ` 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention. **(MTP Sept 24 Series 2)**

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

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

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ` 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

Q-16 How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end? **(MTP Sept 24 Series 1)** length of answer depends on marks allotted to question

Ans. A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

(i) Discharge by performance

(ii) Discharge by mutual agreement

(iii) Discharge by impossibility of performance
(iv) Discharge by lapse of time
(v) Discharge by operation of law
(vi) Discharge by breach of contract
(vii) Promisee may waive or remit performance of promise
(viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance
(ix) Merger of rights

Q-17 M Ltd. contract with Shanti Traders to make and deliver certain machinery to them by 30th June 2023 for ` 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ` 12.75 lakhs. Due to this, Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. **(MTP June 24 Series 2)**

Ans. Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him there by which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non - performance of the contract must be taken into account. Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ` 1.25 lakh (i.e. ` 12.75 minus ` 11.50 = ` 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

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

Q-18 Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872? **(MTP June 24 Series 1)**

Ans. "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

Q-19 A, B and C jointly promised to pay D a sum of ` 6,000. Examine, considering the provisions of the Indian Contract Act, 1872 -

(i) Can D compel any of three parties A, Band C to pay him ` 6,000?

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

(1) Both A and B were solvents.

(2) A is not in a position to pay anything. **(7 Marks) (PYQ Jan 25) (MTP May 25 Series 2)**

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

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case,
(i) D can compel any of three parties A, B and C to pay him ` 6,000.
(ii) (1) C can recover the contribution from A and B because A, B and C are joint promisors.
(2) A is unable to pay anything, C is compelled to pay the whole. C is entitled to receive ` 3,000 from B.

Q-20 Rahul is manufacturer of jute bags. He contracted with Sonia to supply raw jute for the purpose of making bags. Rahul informed Sonia that production process of jute bags would

start from 27.06.2024 but Sonia must supply raw jute till 25.06.2024 so that quality verifications can be done in next two days. Sonia supplied the jute on 27.06.2024 and informed Rahul that she couldn't supply on 25.06.2024 due to some unavoidable reasons and she also assured that quality measures were not anyway compromised in supplies. But Rahul wanted to avoid the contract as he was not given opportunity to examine the goods. In light of provisions of Indian Contract Act, 1872, state whether Rahul can avoid the contract? **(RTP May 25) (MTP Sept 25 Series 2)**

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

In the instant case, Rahul, a manufacturer of jute bags entered in a contract with Sonia to supply raw jute with the instructions that he needs raw jute till 25.06.2024 so that quality verifications can be done in next two days. But Sonia supplied the jute on 27.06.2024 with the information that she couldn't supply on 25.06.2024 due to some unavoidable reasons. On the basis of the facts of the case, Rahul was not given a proper opportunity to examine the goods at the time of performance. This cannot be considered as valid performance by Sonia. Hence, Rahul can avoid the contract entered with Sonia.

Q-21 (i) Give your opinion with reference to provisions of the Indian Contract Act, 1872:

1. Whether Joint promisor and promisee voluntary discharge their obligation even after death?
2. In case they won't be able to discharge their obligation, whether any of the joint promisor may be compelled?
3. What would be the situation in case of default by any one of them? **(4 Marks)**

(ii) What are the effects of Coercion? "Whether threat to commit suicide is coercion"? Elaborate with reference to provisions of the Indian Contract Act, 1872. **(2 Marks) (PYQ May 25)**

Ans. **(i)**

1. According to section 42 of the Indian Contract Act, 1872, if two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.
Hence, the legal representative can jointly discharge the obligations of joint promisor and promisee, after their death.
2. As per section 43, each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
Hence, the joint promisor may be compelled.
3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

(ii) Effects of coercion under section 19 of the Indian Contract Act, 1872

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Threat to commit suicide – Whether it is coercion?

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

Q-22 CA. Sarthak Jain had decided to get interior work for his new office. For this purpose, he entered into a contract with M/s Sherry Fine Interiors. It was agreed that M/s Sherry Fine Interiors will complete the interior work upto 31.01.2025. On 31.01.2025, CA. Sarthak Jain observed that only 20% to 30% work is completed. He decided to cancel the contract with M/s Sherry Fine Interiors. M/s Sherry Fine Interiors filed the suit against CA. Sarthak Jain for recovery of the cost which he incurred on the interior work. CA. Sarthak Jain argued that M/s Sherry Fine Interiors did not complete the work within the time as per contract and further the work done till 31.01.2025 by M/s Sherry Fine Interiors was of no use to him as he has to appoint new interior designer. Explain, whether CA. Sarthak Jain is liable to pay the cost of work done by M/s Sherry Fine Interiors under the provisions of the Indian Contract Act, 1872? **(RTP Sept 25)**

Ans. Section 2(i) of the Indian Contract Act, 1872 provides that an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Further, when a party to a contract promise to perform a work within a specified time, could not perform with in that time, the contract is voidable at the option of the promisee. If promisee has received any benefit, he must return to promisor.

In the instant case, CA Sarthak Jain contracted with M/s Sherry Fine Interiors for doing interior work in his new office and 31.01.2025 was deadline. M/s Sherry Fine Interiors could complete only 20% to 30% work upto 31.01.2025. CA Sarthak Jain cancelled the contract, but M/s Sherry Fine Interiors filed the suit against CA Sarthak Jain for recovery of the cost which he incurred on the interior work.

In the given problem, the contract is voidable at the option of CA Sarthak Jain as work is not completed within the time agreed in the contract. Further, CA Sarthak Jain is not liable to pay the cost incurred by M/s Sherry Fine Interiors as that cost did not provide any benefit to him and he has to appoint a new interior designer.

Q-23 "Explain the various persons by whom a contract may be performed as per the Indian Contract Act, 1872. **(MTP Sept 25 Series 1)**

Ans. By Whom a Contract may be Performed (Section 40, 41 and 42 of the Indian Contract Act, 1872)

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

1. Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
2. Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.
3. Legal Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37, para 2). But their liability under a contract is limited to the value of the property they inherit from the deceased.
4. Third persons: Effect of accepting performance from third person (Section 41): When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised not ratified the act of the third party.
5. Joint promisors (Section 42): When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

Q-24 Mr. Lal, a well-known builder, entered into a contract with Mr. Kumar, a property developer, to construct a large shopping mall in Jaipur for a total consideration of ` 10 crores, to be completed within 18 months. After the work began, both parties mutually decided to alter the nature of their agreement. By mutual consent, a new contract was substituted, under which Mr. Lal would instead construct a five-star luxury hotel on the same land for an increased price of `12 crores. This new agreement expressly cancelled the earlier mall contract.

However, six months after the new agreement was executed, the State Government, under its Urban Development Policy, passed a law prohibiting the construction of hotels in that particular commercial zone, though the construction of shopping malls was still permitted. Due to this prohibition, Mr. Lal stopped the construction work and informed Mr. Kumar that the contract had become impossible to perform. Mr. Kumar, however, filed a suit against Mr. Lal for breach of the new contract, demanding damages on the ground that Mr. Lal had failed to perform his obligation.

Decide, under the provisions of the Indian Contract Act, 1872, whether Mr. Lal is liable for breach of contract or whether the contract has become void due to impossibility. **(RTP Jan 26)**

Ans. According to section 62 of the Indian Contract Act 1872, if the parties to a contract agree to substitute a new contract in place of the old one, or to rescind or alter it, the original contract need not be performed.

Section 56 provides that an agreement to do an act which is impossible in itself is void. Further, if a contract was possible when it was made, but becomes impossible or unlawful after formation due to some event beyond the control of parties, it becomes void. However, mere commercial hardship or rise in cost is not impossibility. Impossibility applies only when the performance has become absolutely impracticable or unlawful.

In the instant case, at first, Mr. Lal agreed to construct a shopping mall for `10 crores within 18 months. Subsequently, both Lal and Kumar, by mutual consent, substituted the original agreement with a new one, under which Lal was required to construct a luxury hotel for `12 crores. By this substitution, the earlier mall contract stood discharged. During the continuation of the new contract, the State Government imposed a legal prohibition on the construction of hotels in that particular zone, which directly affected the subject matter of the agreement.

Here, the first contract for the construction of a mall was discharged by novation under Section 62, since a new contract was formed with mutual consent. Therefore, the mall contract no longer remained enforceable.

As regards the substituted contract for construction of the hotel, a subsequent change in Law by the government prohibited hotel construction in that area. This made performance of the hotel contract unlawful and impossible. Under Section 56, the contract therefore became void due to supervening impossibility.

Hence, Mr. Lal is not guilty of breach of contract because nonperformance resulted from an event beyond his control. Mr. Kumar cannot claim damages as the contract stood discharged by impossibility. Both parties are therefore relieved from their respective obligations.

UNIT – 5: BREACH OF CONTRACT AND ITS REMEDIES

Q-1 "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts. **(Module Q) (MTP June 24 Series 1) (MTP Sept 24 Series 2)**

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

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

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

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

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

Q-2 "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain. **(Module Q)**

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

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

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

Explanation to Section 74

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

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

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

Q-3 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ` 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ` 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ` 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. **(Module Q)**

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

The leading case on this point is "Hadley vs. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ` 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ` 750/- (i.e. 1000 water bottles x 0.75 paise).

Q-4 Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way incold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. For damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872? **(Module Q) (MTP Sept 24 Series 1)**

Ans. Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

Q-5 In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of the Indian Contract Act, 1872. **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

Ans. Ordinary damages: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage cause to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

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

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

Q-6 Where a party to a contract refuses altogether to perform, or is disabled from performing his part of it, the other party has a right to rescind it. Discuss this statement and the effects of such refusal under the provisions of The Indian Contract Act, 1872. **(6 Marks PYQ June 24)**

Ans. An anticipatory breach of contract is a breach of contract occurring before the time fixed

for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

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

(a) Expressly by words spoken or written, and

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

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

Q-7 Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale. **(6 Marks PYQ June 23)**

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

1. Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. Suit for specific performance (Section 58): Where the seller commits breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific and where damages would not be an adequate remedy.
3. Suit for breach of warranty (Section 59): Where there is breach of warranty on the part of the seller, or where the buyer elects to or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –

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

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

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

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

5. Suit for interest:

(1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.

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

Q-8 Rahul was a Disk Jockey at a five-star hotel. As per the contract, he issupposed to perform every weekend. (i.e. twice a week). Rahul will bepaid ` 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

(i) Does the hotel have the right to end the contract?

(ii) If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?

(iii) In which of the case – (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach? **(RTP June 24)**

Ans. By analysing Section 39 of the Indian Contract Act, 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee):
(a) To terminate the contract
(b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers.

In the given case,

(i) Yes, the hotel has the right to end the contract with Rahul, the DJ.

(ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

Q-9 Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered to the place after the conclusion of the exhibition. On account of such breach

of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872? **(RTP Sept 24)**

Ans. As per Section 73 to 75 of Indian Contract Act, 1872, damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale).

Therefore, when a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

Q-10 In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y has given loan to Mr. G of ` 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable as per the Indian Contract Act, 1872?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? **(MTP June 24 Series 2)**

Ans. (i) As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed. Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

(ii) Promise to pay time-barred debts - Section 25 (3): Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)]. In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full

amount to Mr. Y. Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

Q-11 What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? **(MTP June 24 Series 2)**

Ans. Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:
(1) It is only available if the original contract has been discharged.
(2) The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum merit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate. Where a person orders only 12 bottles of a whiskey from a wine merchant but also receives 2 bottles of brandy, and the purchaser accepts them, the purchaser must pay a reasonable price for the brandy.

The claim for quantum meruit arises in the following cases:

(a) When an agreement is discovered to be void or when a contract becomes void.
(b) When something is done without any intention to do so gratuitously.
(c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
(d) When one party abandons or refuses to perform the contract.
(e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
(f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

Q-12 M/s Janta Machine Tools & Co. contracted with M/s Ruchi Traders to make and deliver certain machinery by 31st July for ` 15 Lakhs. There was a labour strike in the factory of M/s Janta Machine Tools & Co. and it could not manufacture and deliver the machinery to M/s Ruchi Traders. Afterwards, M/s Ruchi Traders had to purchase the machinery from another manufacturer for ` 18 Lakhs. M/s Ruchi Traders was also prevented from

performing a contract which was made with M/s Shiksha Technologies at the time of its contract with M/s Janta Machine Tools & Co. and were compelled to pay compensation of ` 2 Lakhs to M/s Shiksha Technologies. M/s Janta Machine Tools & Co. was very well informed by M/s Ruchi Traders about its contract with M/s Shiksha Technologies. M/s Ruchi Traders sued M/s Janta Machine Tools & Co for recovery of compensation of ` 3 Lakhs (i.e. ` 18 Lakhs – ` 15 Lakhs) plus ` 2 Lakhs given to M/s Shiksha Technologies. Advise under the provisions of the Indian Contract Act, 1872. **(RTP May 25)**

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

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

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

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

Q-13 On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @`900; 'M'@ 1,000 and 'L' @ 1,100 per piece have to be supplied on or before 31st May, 2023.

However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ` 1,000; `1,100; and ` 1,200 for 'S', 'M' and 'L' sizes respectively.

Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872. **(3 Marks PYQ Dec 23)**

Ans. As per the provisions of Section 39 of the Indian Contract Act, 1872, 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.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

(i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or

(ii) 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.

Important Note: The answer can also be given as per Section 73 of the Indian Contract Act, 1872 which lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ` 90,000 [300 piece @ ` 100 (Small), 300 piece @ ` 100 (Medium) and 300 piece @ ` 100 (Large)].

Q-14 Akhil ordered 100 Kgs of wheat to M/s Sahil Kirana Store, and it promised to supply the wheat by the evening. In the evening, the hawker of M/s Sahil Kirana Store comes with 100 Kgs of wheat but mistakenly he delivered it at the house of neighbor of Akhil. Referring to the provisions of the Indian Contract Act, 1872, advice who will be liable to pay the price of wheat? **(RTP Sept 25)**

Ans. By virtue of provisions of Section 72 of the Indian Contract Act, 1872, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. Further, as per decision taken in case of Shivprasad Vs Sirish Chandra, every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable.

In the instant case, Akhil contracted M/s Sahil Kirana Store for supply of 100 Kgs of wheat which to be delivered by the evening. In the evening, the hawker of M/s Sahil Kirana Store mistakenly delivered 100 Kgs wheat at the house of neighbor of Akhil.

As the hawker of M/s Sahil Kirana Store mistakenly delivered 100 Kgs wheat at the house of neighbor of Akhil and neighbor accepted the wheat, there is a quasi-contract between M/s Sahil Kirana Store and neighbor. Hence, neighbor will be liable to pay the price of wheat.

PRABJOT SINGH

UNIT – 6: CONTINGENT AND QUASI CONTRACTS

Q-1 Explain the-term 'Quasi Contracts' and state their characteristics. **(Module Q) (RTP June 24) (MTP Jan 25 Series 1)**

Ans. Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The 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.

Q-2 X, a minor was studying in M.Com. in a college. On 1st July, 2021 he took a loan of ` 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2021. X possesses assets worth ` 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. **(Module Q)**

Ans. Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Q-3 P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D? **(Module Q)**

Ans. Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other.

In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party P made the payment and can recover the same from D.

Q-4 Rahul found a smart watch in a restaurant. He enquired about all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the

restaurant to enquire about the smart watch. The manager refused to return it to Rahul, saying that it did not belong to Rahul. In the light of the Indian Contract Act, 1872, can Rahul recover it from the Manager? **(Module Q) (MTP June 24 Series 3)**

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

Thus, a finder of lost goods has:
(i) to take proper care of the property as man of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

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

Q-5 Mr. L let out his residential house to Mr. M for ` 50,000 p.m. for a period of one year. According to the Rent agreement, electricity bill will be paid by Mr. L. But Mr. L could not pay electricity dues up to 5 months, due to his financial hardships. The Electricity Board sent the notice of disconnection, if it is not paid within a week's time. To avoid all this, Mr. M paid the electricity bill of ` 50,000 with penalty. Later on, L refused to reimburse 50,000 and argued that he has paid bill voluntarily because of his own interest. Decide with reference to provisions of the Indian Contract Act, 1872 whether Mr. M is entitled to be reimbursed by Mr. L? **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 2)**

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

Q-6 What is the meaning of contingent contract? Write briefly its essentials. Also, explain any three rules relating to enforcement of a contingent contract. **(6 Marks) (PYQ June 24) (MTP Jan 25 Series 2) (RTP Jan 26)**

Ans. **Essentials of a contingent contract**

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
(b) The event referred to as collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

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

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

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

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

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

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

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

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

(e) Contingent on specified event not happening within fixed time: Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

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

Q-7 Rohan found a wallet in a restaurant. He enquired all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep the wallet till the true owner is found. After a week, Rohan went back to the restaurant to enquire about the wallet. The manager refused to return it to Rohan, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can Rohan recover the wallet from the Manager? **(RTP Jan 25)**

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

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

(ii) no right to appropriate the goods and

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

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

Q-8 What constitutes a contingent contract under the Indian Contract Act, 1872, and what are its essential elements? **(MTP Sept 24 Series 1)**

Ans. **Essentials of a contingent contract**

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

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

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

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

Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872)
"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".

Q-9 "What do you understand by a quasi-contract? Under what circumstances does it arise according to the Indian Contract Act, 1872?" **(MTP May 25 Series 1)**

Ans. Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

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

(i) Claim for necessaries supplied to persons incapable of contracting (Section 68): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

(ii) Payment by an interested person (Section 69): A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(iii) Obligation of person enjoying benefits of non-gratuitous act (Section 70): In term of section 70 of the Act "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered".
It thus follows that for a suit to succeed, the plaintiff must prove:
(i) that he had done the act or had delivered the thing lawfully;
(ii) that he did not do so gratuitously; and
(iii) that the other person enjoyed the benefit.

(iv) Responsibility of finder of goods (Section 71): 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus, a finder of lost goods has:
(i) to take proper care of the property as man of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

(v) Money paid by mistake or under coercion (Section 72): "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".
In all the above cases the contractual liability arose without any agreement between the parties.

Q-10 With reference to provisions of the Indian Contract Act, 1872 define the following terms:
(i) Quasi-contracts and its salient features
(ii) Responsibility of finder of goods **(6 Marks) (PYQ May 25) (MTP Sept 25 Series 1)**

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

Salient features of quasi contracts:
(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
(b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

(ii) Responsibility of finder of goods

As per section 71 of the Indian Contract Act, 1872, 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.
Thus, a finder of lost goods has:
(i) to take proper care of the property as man of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

Q-11 Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money. Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount- of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother? **(6 Marks PYQ Nov 22)**

Ans. (i) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):
If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

Q-12 Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of ` 1,00,000 from Bhavesh for payment of his college fees and to purchase books and agreed to repay by 31st December, 2023. Amit possesses assets worth ` 9 lakhs. On due date, Amit fails to pay back

the loan to Bhavesh. Bhavesh now wants to recover the loan from Amit out of his (Amit's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Bhavesh would succeed. **(RTP Sept 24)**

Ans. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
In the instant case, since the loan given to Amit is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse Bhavesh.
Hence, Bhavesh can proceed against the assets of Amit.

Q-13 Kajal, wife of Ajay, is lunatic. She purchased a Diamond set of ` 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay. The Jewellers filed suit against Ajay for recovery of price of Diamond set. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Jewellers is entitled to claim the price from Ajay? **(MTP Sept 25 Series 2)**

Ans. By virtue of provisions of Section 68 of the Indian Contract Act, 1872, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. In other words, supplies of necessaries to a lunatic can be recovered from property belonging to lunatic.

In the instant case, Kajal, a lunatic, purchased a Diamond set of ` 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay.
Here, Diamond set purchased by Kajal is not necessaries generally. Hence, the Jewellers cannot recover the amount of ` 15 Lakhs from Ajay. valid contract of guarantee

Q-14 What is the meaning of the term Quantum Meruit? Explain any four cases in which a claim for quantum meruit can arise. **(6 Marks PYQ Sep 2025)**

Ans. Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at the time of breach done only a part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.

For the application of this doctrine, two conditions must be fulfilled:

(i) It is only available if the original contract has been discharged.

(ii) The claim must be brought by a party not in default.

The claim for quantum meruit arises in the following cases:

(a) When an agreement is discovered to be void or when a contract becomes void.

(b) When something is done without any intention to do so gratuitously.

(c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.

(d) When one party abandons or refuses to perform the contract.

(e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

(f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

PRABJOT SINGH

UNIT – 7: CONTRACT OF INDEMNITY AND GUARANTEE

Q-1 What are the rights of the indemnity-holder when sued? **(Module Q)**

Ans. Rights of Indemnity- holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(a) all damages which he may be compelled to pay in any suit
(b) all costs which he may have been compelled to pay in bringing/ defending the suit and
(c) all sums which he may have paid under the terms of any compromise of suit.

It may be understood that the rights contemplated under section 125 are not exhaustive. The indemnity holder/ indemnified 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 the liability and to pay it off.

Q-2 Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid? **(Module Q) (MTP June 24 Series 3)**

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

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

The conditions under which the guarantee is invalid or void is provided in section 142, 143 and 144 of the Indian Contract Act. These include:
(i) Guarantee obtained by means of misrepresentation.
(ii) Guarantee obtained by means of keeping silence as to material circumstances.
(iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

Q-3 Mr. X, is employed as a cashier on a monthly salary of ` 12,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of ` 10,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y? **(Module Q)**

Ans. According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.
In the instant case, the creditor has made variance (i.e. change in terms) without the consent of surety. Thus, surety is discharged as to the transactions subsequent to the

change.

Hence, Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary.

Q-4 A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability. **(Module Q)**

Ans. According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is discharged or by any act or omission for the creditor the legal consequence of which is the discharge of the principal debtor.

In the given case, B omits to supply the necessary construction material. Hence, C is discharged from his liability.

Q-5 Mr. D was in urgent need of money amounting to ` 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability? **(Module Q) (MTP Sept 24 Series 1)**

Ans. Co-sureties liable to contribute equally (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Q-6 Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years' contract at a monthly salary of ` 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay ` 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ` 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's appointment. **(Module Q)**

Ans. As per the provisions of Section 133 of the Indian Contract Act, 1872, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation.

Q-7 A agrees to sell goods to B on the guarantee of C for the payment of the price of goods in default of B. Is the agreement of guarantee valid in each of the following alternate cases:

Case 1. If A is a Minor

Case 2: If B is a Minor

Case 3: If C is a minor. **(Module Q)**

Ans. Case 1: The agreement of guarantee is void because the creditor is incompetent to contract.

Case 2: The agreement of guarantee is valid because the capability of the principal debtor does not affect the validity of the agreement of the guarantee.

Case 3: The agreement of guarantee is void because the surety is incompetent to contract.

Q-8 S asks R to beat T and promises to indemnify R against the consequences. R beats T and is fined ` 50,000. Can R claim ` 50,000 from S. **(Module Q)**

Ans. R cannot claim ` 50,000 from S because the object of the agreement was unlawful. A contract of indemnity to be valid must fulfil all the essentials of a valid contract.

Q-9 Manoj guarantees for Ranjan, a retail textile merchant, for an amount of ` 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ` 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ` 40,000? **(Module Q)**

Ans. Discharge of Surety by Revocation: As per section 130 of the Indian Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.

However, liability of Manoj for previous transactions (before revocation) i.e. for ` 40,000 remains. He is liable for payment of ` 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

Q-10 'C' advances to 'B', ` 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ` 2,00,000 without knowledge of 'A'. C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth ` 80,000, under the Indian Contract Act, 1872. **(Module Q)**

Ans. Surety's right to benefit of creditor's securities: According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

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

Q-11 State the rights of Indemnity-holder when sued. **(2 Marks PYQ Sept 24) (MTP Jan 25 Series 2)**

Ans. Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—
(a) all damages which he may be compelled to pay in any suit
(b) all costs which he may have been compelled to pay in bringing/ defending the suit and
(c) all sums which he may have paid under the terms of any compromise of suit.

Q-12 Explain any four differences between Contract of Indemnity and Contract of Guarantee. **(4 Marks PYQ Sept 24)**

Ans. Distinction between a Contract of Indemnity and a Contract of Guarantee

Point of distinction	**Contract of Indemnity**	**Contract of Guarantee**
Number of party/ parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity	The surety acts at the request of principal debtor

	holder.	
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.

Q-13 R owns an electronics store. P visited the store to buy a water purifier priced at `54,000/-. He specifically requested R for a purifier with a copper filter. As P wanted to buy the purifier on credit, with the intention of paying in 9 equal monthly instalments, R demands a guarantor for the transaction. S (a friend of P) came forward and gave the guarantee for payment of water purifier. R sold P, a water purifier of a specific brand. P made payment for 4 monthly instalments and after that became insolvent. Explain with reference to the Indian Contract Act, 1872, the liability of S as a guarantor to pay the balance price of water purifier to R.
What will be your answer, if R sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter? Neither P nor S was aware of this fact and upon discovering the truth, P refused to pay the price. In response to P's refusal, R filed the suit against S, the guarantor. Explain with reference to the Indian Contract Act 1872, whether S is liable to pay the balance price of water purifier to R? **(7 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 1)**

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

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

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

Since P failed to pay the remaining instalments due to insolvency, S, as the guarantor, is liable to pay the balance price of the water purifier to R. In the given situation, S will have to pay the balance amount of ` 30,000 to R. [54,000-(4x6,000)]

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

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a

material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid.

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

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

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

Q-14 Explain in brief with reference to the provisions of the Indian Contract Act, 1872, what are the rights enjoyed by Surety against the Creditor, the Principal Debtor and Co-Sureties? **(6 Marks PYQ June 24) (MTP Jan 25 Series 2) (RTP May 25)**

Ans. In terms of the provisions of the Indian Contract Act, 1872, the surety enjoys the following rights:
(a) Rights against the creditor;
(b) Rights against the principal debtor;
(c) Rights against co-sureties.

Right against the Creditor

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

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

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

Right against the principal debtor

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

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

Rights against co-sureties

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

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

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

Q-15 Sarthak is employed as a cashier on a monthly salary of ` 50,000 by ABCbank for a period of three years. Mohit gave surety for Sarthak's goodconduct. After nine months, the financial position of the bankdeteriorates. Then Sarthak agrees to accept a lower salary of ` 40,000per month from the Bank. Two months later, it was found that Sarthakhad misappropriated cash from the time of his appointment. What isthe liability of Mohit taking into account the provisions of the IndianContract Act, 1872? **(RTP June 24)**

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

In the instant case, the creditor has made a variance (i.e. change in terms) without the consent of surety. Thus, surety is discharged as to the transactions subsequent to the change.

Hence, Mohit is liable as surety for the loss suffered by the bank due to misappropriation of cash by Sarthak during the first nine months but not for misappropriations committed after the reduction in salary.

Q-16 'Sooraj' guarantees 'Vikas' for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March 2023. 'Vikas' supplied goods of ` 30,000 on 01.03.2023 and of ` 20,000 on 03.03.2023 to 'Nikhil'. On 05.03.2023, 'Sooraj' died in a road accident. On 10.03.2023, being ignorant of the death of 'Sooraj', 'Vikas' further supplied goods of ` 40,000. On default in payment by 'Nikhil' on due date, 'Vikas' sued legal heirs of 'Sooraj' for recovery of ` 90,000. Describe, whether legal heirs of 'Sooraj' are liable to pay ` 90,000 under the provisions of Indian Contract Act, 1872.
What would be your answer, if the estate of 'Sooraj' is worth ` 45,000 only? **(RTP Sept 24)**

Ans. According to section 131 of Indian Contract Act, 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.
In this question, 'Sooraj' was surety for the transactions to be done between 'Vikas' & 'Nikhil' during the month of March, 2023. 'Vikas' supplied goods of ` 30,000, ` 20,000 and

of ` 40,000 on 01.03.2023, 03.03.2023 and 10.03.02023 respectively. 'Sooraj' died in a road accident, but this was not in the knowledge of 'Vikas'. When 'Nikhil' defaulted on payment, 'Vikas' filed suit against legal heirs of 'Sooraj' for recovery of full amount i.e. ` 90,000.
On the basis of above, it can be said in case of death of surety ('Sooraj'), his legal heirs are liable only for those transactions which were entered before 05.03.2023 i.e. for ` 50,000. They are not liable for the transaction done on 10.03.2023 even though Vikas had no knowledge of death of Sooraj.
Further, if the worth of the estate of deceased is only ` 45,000, the legal heirs are liable for this amount only.

Q-17 Mr. R extended a loan to Mr. D with X, Y, and Z as sureties. Each surety executed a bond with varying penalty amounts, X with a penalty of ` 10,000, Y with ` 20,000 and Z with ` 40,000, in the event of Mr. D's failure to repay the borrowed money to Mr. R. Examine the liabilities of the sureties in accordance with the Indian Contract Act, 1872, when Mr. D defaults to the tune of ` 42,000. Additionally, assess the situation, if there is no contractual arrangement among the sureties. **(MTP Jan 25 Series 1)**

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

Section 147 provides that the principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.
In the given question, Mr. D makes a default of ` 42,000, and X, Y and Z as sureties have executed the bond with varying penalty amounts. Hence, X is liable to pay ` 10,000, and Y and Z ` 16,000 each.

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

Q-18 Ankit has taken a loan of ` 1,00,000 from Kishore on the guarantee of Sudeep at the interest rate of 12% p.a. After some time, due to financial crises of Ankit and at his request, Kishore reduced the interest rate to 8% and also extended the time for repayment of loan without the consent of Sudeep. Ankit becomes insolvent. Whether Kishore sue Sudeep for recovery of the amount under the provisions of the Indian Contract Act, 1872? **(RTP May 25)**

Ans. Section 133 of the Indian Contract Act, 1872 provides where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.
Further, according to section 135, a contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or promises not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

In the instant case, Kishore advances Ankit a loan on the guarantee of Sudeep. At the request of Ankit, Kishore reduces the interest rate and also extended the time for repayment without the knowledge of Sudeep.
On the basis of the above provisions and facts of the case, the surety Sudeep is discharged as variation is made in a contract of guarantee and creditor Kishore extends the time for repayment without obtaining the consent of Sudeep.

Q-19 Albert obtained 2 loans of ` 3,00,000 and ` 4,00,000 respectively from a reputed Bank. Out of these 2 loans, loan of ` 3,00,000 was guaranteed by Robert. Albert sent ` 2,00,000 to bank but did not intimate as to how it is to be appropriated towards the loans. The Bank appropriated the whole of ` 2,00,000 to the loan of ` 4,00,000 (the loan not guaranteed). Robert objected on the decision of the Bank. He argued with bank that repayment amount should be first adjusted to the guaranteed loan. State with reasons, whether the Bank was correct in its decision under the Indian Contract Act, 1872? **(MTP May 25 Series 1) (RTP Sept 25)**

Ans. Section 60 of the Indian Contract Act, 1872 provides, where the debtor does not intimate and there are no circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor. However, it cannot be applied to a disputed debt.
In the instant case, Albert obtained 2 loans of ` 3,00,000 and ` 4,00,000 respectively from a reputed Bank of which loan of ` 3,00,000 was guaranteed by Robert. Albert sent ` 2,00,000 to bank without intimating as to how it is to be appropriated towards the loans. The Bank appropriated the whole of ` 2,00,000 to the loan of ` 4,00,000 (the loan not guaranteed). Robert objected that repayment amount should be first adjusted to the guaranteed loan.
On the basis of provisions and facts of the case, it can be said that in the absence of clear intimation about the appropriation of payment, it is the sole discretion of the Bank to which loan it can appropriate the amount. Hence, the Bank was correct in its decision under the Indian Contract Act, 1872.

Q-20 "Explain the circumstances under which a surety may be discharged by revocation of the contract of guarantee under the Indian Contract Act, 1872." **(MTP May 25 Series 1)**

Ans. A surety is said to be discharged when his liability as surety comes to an end. The various modes of discharge of surety are as below:
(i) By revocation of the contract of guarantee.
(ii) By the conduct of the creditor, or
(iii) By the invalidation of the contract of guarantee.

By revocation of the Contract of Guarantee
(a) Revocation of continuing guarantee by Notice (Section 130 of the Indian Contract Act, 1872): The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.
A specific guarantee can be revoked only if liability to principal debtor has not accrued.
(b) Revocation of continuing guarantee by surety's death (Section 131): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the

surety's estate remains liable for the past transactions which have already taken place before the death of the surety.
(c) By novation [Section 62]: The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

Q-21 According to provisions of the Indian Contract Act, 1872, define the following terms with reference to contract of guarantee:
(i) Nature and extent of Surety's Liability
(ii) Discharge of a Contract of Surety by Invalidation of the Contract of Guarantee. **(6 Marks) (PYQ May 25)**

Ans. **(i) Nature and extent of Surety's Liability [Section 128 of the Indian Contract Act, 1872]**
(A) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.
(B) Liability of surety is of secondary nature as he is liable only on default of principal debtor.
(C) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
(D) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

(ii) Discharge of a contract of Surety by the invalidation of the contract of guarantee.
(a) Guarantee obtained by misrepresentation [Section 142]: Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
(b) Guarantee obtained by concealment [Section 143]: Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.
(c) Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144): Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Q-22 A, B, and C act as co-sureties for a loan of ` 4,00,000/- taken by R from XYZ Bank. There are three bonds specifying different liability limits for each surety such as A's liability is limited to ` 1,00,000/-, B's liability is limited to ` 2,00,000/- and C's liability is limited to ` 4,00,000/-. Due to financial difficulties, R defaults on the loan, and the bank seeks to recover the amount from the sureties.
As per the provisions of the Indian Contract Act, 1872,
(i) Analyse and determine the amount each co-surety (A, B, and C) is liable to pay, and
(ii) What will be your answer if the loan amount is ` 6,00,000/-instead of ` 4,00,000/-? **(6 Marks PYQ Sep 2025)**

Ans. Co-sureties liable to contribute equally (Section 146 of the Indian Contract Act, 1872): Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.

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

In the instant case,

(i) A, B and C act as co-sureties for a loan of ` 4,00,000 taken by R from XYZ bank. As per specific bonds by each of them, A's liability is limited to ` 1,00,000, B's liability is limited to ` 2,00,000 and C's Liability is limited to ` 4,00,000. R makes the default of ` 4,00,000. Based on the above provisions, A, B and C were liable for contribution subject to maximum limit fixed as per their specific bonds. Therefore, A is liable to pay 1,00,000 rupees, and B and C ` 1,50,000 rupees each.

(ii) If the loan amounts to ` 6,00,000, A is liable to pay 1,00,000 rupees, B is liable to pay ` 2,00,000 and C is liable to pay 3,00,000.

UNIT – 8: BAILMENT AND PLEDGE

Q-1 State the essential elements of a contract of bailment. **(Module Q) (MTP June 24 Series 3) (MTP June 24 Series 1)**

Ans. Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:

(ii) Delivery of goods—The essence of bailment is delivery of goods by one person to another.

(iii) Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.

(iv) Return of goods in specific—The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.

(v) Ownership of goods—In a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.

(vi) Property must be movable—Bailment is only for movable goods and never for immovable goods or money.

Q-2 Give differences between Bailment and Pledge. **(Module Q)**

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

(a) As to purpose: Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other 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.

Q-3 Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

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

(ii) Seizure of goods by customs authorities. **(Module Q)**

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

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be no transfer in ownership of the goods.

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

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

Q-4 A hires a carriage from B and agrees to pay ` 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B. **(Module Q)**

Ans. Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Q-5 A bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed. **(Module Q)**

Ans. According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.

Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

Q-6 R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidently slips and the umbrella is badly damaged. Who bear the loss and why? **(Module Q) (MTP Sept 24 Series 2)**

Ans. M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the

agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Q-7 Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ` 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar? **(Module Q)**

Ans. According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q-8 Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? **(Module Q)**

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

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

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

Q-9 Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872? **(Module Q)**

Ans. Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by

him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

Q-10 In accordance with the provisions of the Indian Contract Act, 1872, answer the following:
(i) Rights of Bailor against any wrong doer (Third Party)
(ii) Duties of the Pawnee **(6 Marks PYQ Sept 24) (MTP Jan 25 Series 2)**

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

(ii) Duties of the Pawnee
Pawnee has the following duties:

b. Duty to take reasonable care of the pledged goods.
c. Duty not to make unauthorized use of pledged goods.
d. Duty to return the goods when the debt has been repaid or the promise has been performed.
e. Duty not to mix his own goods with goods pledged.
f. Duty not to do any act which is inconsistent with the terms of the pledge.
g. Duty to return accretion to the goods, if any.

Q-11 Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:
(i) Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.
(ii) Seizure of goods by customs authorities. **(RTP June 24)**

Ans. As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
For a bailment to exist, the bailor must give possession of the bailed property and the bailee must accept it.

(i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Vikas, Section 148, of the Indian Contract Act, 1872 shall not be applicable.
(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists, and section 148 is applicable.

Q-12 Mr. Stefen owns a chicken farm near Gurugram, where he breeds them and sells eggs and live chicken to retail shops in Gurugram. Mr. Flemming also owns a similar farm near Gurugram, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel, so he had pledged his farm to Mr. Stefen

for one year and received a deposit of ` 25 lakhs and went away. At that point of time, the stock of live birds was 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his farm with live birds and eggs. After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.
Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.
State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case. **(RTP Sept 24)**

Ans. According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.
In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

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

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

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

Q-13 Explain the circumstances under which a contract of bailment may be terminated under the Indian Contract Act, 1872. **(MTP May 25 Series 2)**

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

1. On expiry of stipulated period: If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.
2. On fulfillment of the purpose: If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.
3. By Notice:

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

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

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

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

Q-14 X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ` 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ` 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ` 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ` 60,000/-. X denied for compensation by saying that he was not aware about the engine and brakes fault. Y filed a suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

(i) Whether Y can withheld the amount of hire charges ` 50,000/- on account of non-payment of damages?

(ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car? **(7 Marks) (PYQ May 25)**

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

Bailor's duty to disclose faults in goods bailed in case of non- gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ` 50,000. During the journey, Y has to spend ` 10,000 for repair of engine and paid ` 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.
Therefore, the answers are:

(i) Y can withhold the hire charges of ` 50,000 on account of non-payment of damages and claim an additional `10,000, from X.

(ii) (ii) X is liable for the full ` 60,000 (`10,000 repair + ` 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

Q-15 Raghav found gold and diamond studded wristwatch value approximately ` 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not tum up, he gifted that wristwatch to his son Mahesh.

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

(A) Gifting the wristwatch to his son.

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

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

(D) Selling of wristwatch for recovery of expenses. **(4 Marks PYQ Sept 24)**

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

Thus, a finder of lost goods has:
(i) to take proper care of the property as man of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

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

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—
(1) when the thing is in danger of perishing or of losing the greater part of its value, or
(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

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

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

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

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

Q-16 Rahul hired a car for 15 days from M/s Kushwah Travels. After five days, M/s Kushwah Travels demanded back his car from Rahul. He was also agreed to compensate for any loss suffered by Rahul due to such premature return of goods. But Rahul refused to return the car before the period of bailment i.e. 15 days. M/s Kushwah Travels sued Rahul for recovery of car. Referring to the provisions of the Indian Contract Act, 1872, whether M/s Kushwah Travels can recover the car from the Rahul before the time fixed for bailment? **(RTP Sept 25)**

Ans. According to the Section 159 of the Indian Contract Act, 1872, when the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object. However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee. In the given problem, Rahul hired a car for 15 days from M/s Kushwah Travels but just after five days, M/s Kushwah Travels demanded back his car from Rahul. Rahul refused to return the car before the period of bailment, i.e. 15 days. M/s Kushwah Travels filed suit against Rahul for recovery of car. Premature recovery of goods bailed available only in case of gratuitous bailment.

If bailment is for hire, this right is not available to bailor even he is ready to compensate for such premature return. Hence, M/s Kushwah Travels cannot recover back the goods before 15 days.

Q-17 Mr. Ramesh delivered his gold ornaments to a jeweller, Mr. Arun, for polishing. Arun kept the ornaments in the locker of his shop and locked the premises before leaving. Unfortunately, during the night, some thieves broke into the shop and stole the ornaments. When Ramesh asked for the return of his ornaments, Arun expressed his inability and stated that he had taken as much care of the goods as he would have taken of his own property. Ramesh, however, claimed compensation for the loss on the ground that the ornaments were delivered under a contract of bailment and that the bailee was bound to return them.
Decide, under the provisions of the Indian Contract Act, 1872, whether Arun is liable to compensate Ramesh. **(RTP Jan 26)**

Ans. According to Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods from one person to another for a specific purpose, upon a contract that the goods shall be returned once the purpose is completed.

Section 151 provides that the bailee is bound to take as much care of the goods bailed as a man of ordinary prudence would take of his own goods. Further, Section 152 states that if the bailee has taken such reasonable care, he is not responsible for loss, destruction or deterioration of the goods.

In the instant case, Ramesh entrusted his ornaments to Arun, a jeweller, for polishing. Arun locked them securely in his shop's locker. However, a theft occurred at night, and the ornaments were stolen despite the precautions taken. Ramesh demanded compensation, but Arun refused, claiming that he had exercised ordinary care.

Hence, it is clear that Arun has taken reasonable precautions by locking the ornaments in

the locker and securing the shop. The theft was beyond his control and does not amount to negligence. Therefore, Arun cannot be held liable to compensate Ramesh for the stolen ornaments.

Q-18 M/s GS Famous General Store in NK Market Delhi got a purchase order of 5 kg. Mamra Badam @ ` 3,400/- per kg. from Mr. PK to deliver at his residence in Rohini. When the delivery boy of M/s GS Famous General Store reached at Mr. PK's residence, he found the door locked. When the delivery boy called him on mobile telephone, he told him to hand over the goods to his neighbour Mr. Shah. Mrs. Shah was unaware of the fact that the Mamra Badam were not belonging to them, mixed the Mamra Badam with California Almond. When Mr. Shah told her that the Mamra Badam were belonging to Mr. PK, she again packed the 5 kg. Mamra Badam and delivered it to Mr. PK. This fact came to light when Mr. PK returned the packet to M/s GS Famous General Store by saying that it is not up to the quality and he refused to accept the packet.
In above circumstances, what is the remedy available to Mr. PK according to provisions of the Indian Contract Act, 1872? **(4 Marks PYQ Sep 2025)**

Ans. According to Section 157 of the Indian Contract Act, 1872 if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed, from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

According to Section 160 & 161 of the Indian Contract Act, 1872, it is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

In the given question, Mrs. Shah mixed Mamra Badam with California Almond bailed by Mr. PK and then packed without information and delivered to Mr. PK. Mamra Badam once mixed cannot be separated.

As she mixed the two different kinds of almond, Mr. PK is entitled to be compensated by Mr. Shah. He cannot return goods to M/s GS Famous General Store.

UNIT – 9: AGENCY

Q-1 A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ` 700. M sells it to D for ` 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872. **(Module Q)**

Ans. According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Q-2 State with reason whether the following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective. **(Module Q)**

Ans. Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

Q-3 Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority? **(Module Q) (MTP June 24 Series 1) (MTP Sept 24 Series 2)**

Ans. Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872):

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.
Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

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

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

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

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

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

Q-5 Comment on the statement 'Principal is not always bound by the acts of a sub-agent'. **(Module Q)**

Ans. The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Q-6 ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim? **(Module Q)**

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

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

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

Q-7 R is the wife of P. She purchased sarees on credit from Nalli. Nalli demanded the amount from P. P refused. Nalli filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nalli would succeed. **(Module Q)**

Ans. The position of husband and wife is special and significant case of implied authority. According to the Indian Contract Act 1872, where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessaries. However, the implied authority can be challenged by the husband only in the following circumstances.

(1) The husband has expressly forbidden the wife from borrowing money or buying goods on credit.

(2) The articles purchased did not constitute necessities.

(3) Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller.

(4) The creditor had been expressly told not to give credit to the wife.

Further, where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessaries, if he does not provide for her maintenance.

Since, none of the above criteria is being fulfilled; Nalli would be successful in recovering its money.

Q-8 Bhupendra borrowed a sum of ` 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful. **(Module Q)**

Ans. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

Q-9 'Agent cannot personally enforce, nor be personally bound by, contracts on behalf of the principal' however there are some exceptions to this general rule, explain. **(4 Marks PYQ Sept 24) (MTP Jan 25 Series 2)**

Ans. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

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

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

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

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

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

Q-10 Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ` 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

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

(11) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission? **(3 Marks PYQ June 24) (MTP Jan 25 Series 2)**

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

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

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

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

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

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

(ii) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission? **(RTP Jan 25)**

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

In the instant case,

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

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

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

Q-12 Who is considered as an agent under the Indian Contract Act, 1872, and what are the duties and obligations associated with this role? (MTP Sept 24 Series 1) **(MTP May 25 Series 2)**
length of answer depends on marks allotted to question

Ans. The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

Agent means a person employed to do any act for another or to represent another in dealing with the third persons and

The principal means a person for whom such act is done or who is so represented.

Duties and obligations of an Agent

(iii) Duty to follow instructions or customs
(iv) Duty of reasonable care and skill
(v) Duty to render proper accounts [Section 213]
(vi) Agent's duty to communicate with principal
(vii) Duty not to deal on his own account

(viii) Duty not to make secret profits
(ix) Duty not to delegate
(x) Agent's duty to pay sums received for principal
(xi) Duty not to use any confidential information received in the course of agency against the principal.

Q-13 Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

(xii) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.

(xiii) 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? **(MTP June 24 Series 2)**

Ans. (i) According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.
In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

(ii) According to section 191 of the Indian Contract Act, 1872, a "Sub - agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub-agent.

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

Q-14 What are the conditions to be satisfied for an "Agent's authority in an emergency" under the provisions of The Indian Contract Act, 1872? **(6 Marks) (MTP Sept 25 Series 1)**

OR

Both a sub-agent and a substituted agent are appointed by the agent, however, there are some points of distinction between the two. Elaborate any 6 points. **(6 Marks)(PYQ Jan 25)**

Ans. **Agent's authority in an emergency [Section 189 of the Indian Contract Act, 1872]:** An

agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

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

(i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.

(ii) There should have been actual and definite commercial necessity for the agent to act promptly.

(iii) the agent should have acted bonafide and for the benefit of the principal.

(iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and

(v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

OR

Under the Indian Contract Act, 1872, both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

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

Q-15 Nitin appointed Shiv as his agent to transport apples from Shimla to Delhi. Due to heavy rain in near Shimla, Shiv was stranded for more than seven days. Shiv was not in position to contact with Nitin. To save Nitin from loss, Shiv sold all the apples in the nearby market below the market rate where he was stranded. Explain with reference to the Indian

Contract Act 1872, can Nitin recover the loss from Shiv as Shiv had acted beyond his authority? **(MTP May 25 Series 1)**

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

(vi) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.

(vii) There should have been actual and definite commercial necessity for the agent to act promptly.

(viii) The agent should have acted bonafide and for the benefit of the principal.

(ix) The agent should have adopted the most reasonable and practicable course under the circumstances, and

(x) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

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

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

Q-16 ABC Infrastructure Ltd. was running business successfully from several years. P was the purchase manager of company. He authorized his agent Q to buy Raw Material on his behalf for construction of Roads in Delhi. He instructed Q to buy only Mazboot Brand of Cement @ ` 2,000 – 2,500 per ton to maintain quality of Roads in Delhi. However, Q bought 1,000 tons of Mazboot Brand of cement from Mr. R a very well-known vendor of ABC Infrastructure Ltd. @ `3,500/- per ton. Mr. Q has not disclosed the fact to R that he was buying cement for ABC Infrastructure Ltd. When P discovered this aspect, he refused to pay Mr. R and rejects the cement bought by Q on the ground that Q has exceeded the authority. Mr. R suffered a huge loss on account of this transaction. Give your opinion in accordance with provisions from the Indian Contract Act, 1872:

(i) Whether P was bound to pay Mr. R for cement purchased by his agent Mr. Q?

(ii) On the other hand, Q being agent refused to accept any liability to compensate R. In this situation, Whether Mr. R can file a suit against Q? **(7 Marks) (PYQ May 25)**

Ans. **Principal's liability when agent exceeds authority [Section 227 of the Indian Contract Act, 1872]:** When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal not bound when excess of agent's authority is not separable [Section 228]: Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

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

When the **agent does not disclose the name of the principal** then there arises a presumption that he himself undertakes to be personally liable.
In the instant case, Q violated the instructions of P by buying cement at ` 3,500 per ton, which is beyond the authorized price limit. Furthermore, Q did not disclose to R that he was buying cement for ABC Infrastructure Ltd.
Therefore, the answers are

(xi) No, P was not bound to pay Mr. R, as the agent Q exceeded his authority, and the deviation was inseparable from the authorized act.

(xii) Yes, Mr. R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the principal.

Alternative Answer
In the light of the given facts in the question, P, the Purchase Manger of the ABC Infrastructure Ltd., authorised Q his agent to buy raw material on his behalf for construction of roads in Delhi. He instructed Q to buy only Mazboot brand of cement @ ` 2000-2,500 per ton. However, Q, violated the instructions of P by buying cement at `3,500 per ton. Furthermore, he did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

The stated issue marked in the question is related to the undisclosed principal and exceeding of his authority. Given situation can be dealt with the provisions under section 230, 231 & 233 of the Indian Contract Act.

According to the provision stated in section 230, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.
However, there are exceptions where the agent is presumed to have agreed to be personally bound.

Where the agent does not disclose the name of his principal or undisclosed principal (Principal unnamed), then there arises a presumption that he himself undertakes to be personally liable. Also, when the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act. In that case the agent can be made liable personally for the breach of warranty of authority.
Further section 231 of the Indian Contract Act specifies rights of third parties to a contract made by undisclosed agent.

As per the provision, if an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the

contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.
Section 233 gives the option to a third person to sue the Agent or the Principal. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Therefore, the following are the answers:

(vii) No, P was not bound to pay Mr. R for purchase of the cement @ ` 3500/- per ton, as the agent Q does not disclose the name of his principal and also exceeded his authority, thus making himself to be personally bound and liable for the doing of said transaction.

(viii) Yes, in the light of the section 233, Mr. R is given an option to sue the agent or the Principal or both. Yes, R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the P (principal).

Q-17 Explain the following terms with reference to the Indian Contract Act, 1872:
(i) Pledge by mercantile agent
(ii) Pledge by person in possession under voidable contract **(6 Marks) (PYQ May 25)**

Ans. **(i) Pledge by mercantile agent:** According to section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.
Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

(ii) Pledge by person in possession under voidable contract
According to section 178A of the Indian Contract Act, 1872, When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Q-18 Ajay appoints Vijay to sell his electronic goods lying in his godown. He also agrees to give 10% commission on the sale price to Vijay. Afterwards, Ajay revokes Vijay's authority by sending the letter to Vijay. The letter was sent on 3rd March which was received by Vijay on 7th March. On 5th March, Vijay sold the goods worth `1,20,000. He claimed for commission from Ajay, but Ajay refused as he already revoked the agency before sale of goods. Referring the provisions of the Indian Contract Act, 1872, whether Ajay was liable to pay commission to Vijay? **(RTP Sept 25)**

Ans. According to section 208 of the Indian Contract Act, 1872, the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.

In the instant case, Vijay was appointed by Ajay to sell his electronic goods and for which Vijay will be given 10% commission on the sale price. Subsequently, Ajay revokes Vijay's authority by sending the letter to Vijay on 3rd March which was received by Vijay on 7th March. But on 5th March, Vijay already sold the goods worth ` 1,20,000. He claimed for commission from Ajay, but Ajay refused.

Since, Vijay came to know about revocation of agency after selling the goods, and so therefore, he has right to claim the commission from Ajay.

Q-19 Define the term Ratification under the Indian Contract Act, 1872. Explain the rights of a person as to acts done for him without his authority. What is the effect of ratification? **(6 Marks) (MTP Sept 25 Series 2)**

Ans. Rights of person as to acts done for him without his authority, Effect of ratification [Section 196 of the Indian Contract Act, 1872]: Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. In simple words, "Ratification" means approving a previous act or transaction. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.

Essentials of a valid Ratification

b. Ratification may be expressed or Implied [Section 197]: Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
c. Knowledge requisite for valid ratification [Section 198]: No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
d. The whole transaction must be ratified [Section 199]: There can be ratification of an act in entirely or its rejection in entirely. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.
e. Ratification cannot injure third person [Section 200]: When the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
f. Ratification within reasonable time: Ratification must be made within a reasonable period of time.
g. Communication of Ratification: Ratification must be communicated to the other party.
h. Act to be ratified must be valid: Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.

Q-20 Mr. VG and Mr. PG were trading in unlisted shares for the last seven years. They used to borrow funds from each other whenever required for any trade. Within a week's time, they used to refund the money to each other as per circumstances of the case. They were following this practice for the last five years. On 25th January 2025, Mr. PG wants to buy 20,000 shares of an unlisted company @ ` 500/- each. But due to insufficiency of funds, he asked Mr. VG for ` 40 lakhs. Mr. VG transferred ` 40 lakhs to Mr. PG. After about three months, Mr. VG reminded that Mr. PG had not refunded ` 40 lakhs to him till then. He asked

him to pay back his money. Mr. PG told him that he was trying very hard to sell the shares at a reasonable price of 10% more than the price at which he bought these shares but was unable to do so due to market conditions. He asked Mr. VG to sell his shares on his behalf and authorised him to appropriate the amount of loan of ` 40 lakhs with interest out of the sale proceeds. Mr. VG agreed to do so.

After about 15 days, when market started recovering Mr. PG denied and revoked the authorization by saying that he would sell his shares himself.

With reference to provisions of the Indian Contract Act, 1872, whether the revocation of said agency by Mr. PG was lawful? **(3 Marks PYQ Sep 2025)**

Ans. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

The rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

In the instant case, Mr. PG appointed Mr. VG to sell his shares on his behalf and authorized him to appropriate the amount of loan of ` 40 lakh with interest out of the sale proceeds. Since, interest was created in favour of Mr. VG, thus the revocation of the said agency is not lawful.

Q-21 State with reference to the provisions of the Indian Contract Act, 1872 whether the following are True or False with justification.

(i) The pledge of documents of title to goods by a mercantile agent with the consent of an owner is invalid pledge.

(ii) A appoints B as his agent to sell A's land. Subsequently, under the authority of A, B appoints C as his agent. Later on, A revokes the authority of B, but not that of C. Consequently, the authority of C cannot be terminated.

(iii) The contract of life insurance is not fully covered under the contract of indemnity. **(6 Marks PYQ Sep 2025)**

Ans. **(i) The given statement is False**

Justification: According to Section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent. Provided such Pledge shall be valid as if were made with the authority of the owner of goods and the Pawnee has acted in good faith and has no notice that the Pawnor has no authority to pledge.

(ii) The given statement is False

Justification: According to Section 210 of the Indian Contract Act, 1872, the termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him. In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub agent. Thus, when A revokes the authority of B(agent), it results in termination of authority of sub agent appointed by B i.e. C (sub-agent).

(iii) The given statement is True

Justification: As per Section 124 of the Indian Contract Act, 1872, the term "Contract of Indemnity" is defined as "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." In case of a contract of insurance, the loss may happen due to natural calamities, and not due to conduct of the promisor or any person. Thus, a contract of Life Insurance is not contracts of indemnity as per definition given.

PRABJOT SINGH

LESSON-3

UNIT – 1: FORMATION OF THE CONTRACT OF SALE

Q-1 A agrees to buy a new TV from a shop keeper for ` 30,000 payable partly in cash of ` 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer. **(Module Q)**

Ans. It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods.

In the given case, the new TV set is agreed to be sold for ` 30,000 and the price is payable partly in exchange of old TV set and partly in cash of ` 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

Q-2 A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930? **(Module Q)**

Ans. In this case, B, the buyer has no right against A the seller. Section 8 of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided. This provision is based on the ground of supervening impossibility of performance which makes a contract void.

So, all the following conditions required to treat it as a void contract are fulfilled in the above case:

i. There is an agreement to sell between A and B
ii. It is related to specific goods
iii. The goods are lost because of the sinking of ship before the property or risk passes to the buyer.
iv. The loss of goods is not due to the fault of either party.

Q-3 X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? (Module Q) (MTP June 24 Series 3) **(RTP Sept 25)**

Ans. Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price.

In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X and X can recover a reasonable price of the car from Y.

Q-4 Classify the following transactions according to the types of goods they are:

i. A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.

ii. A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.

iii. T agrees to sell to S all the apples which will be produced in his garden this year. **(Module Q) (RTP Jan 26) (MTP June 24 Series 2) (MTP Sept 24 Series 2) (MTP Jan 25 Series 2) (MTP Sept 25 Series 1)**

Ans.

i. A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

ii. If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.

iii. T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

Q-5 Kartik agreed to sell his laptop to Vasant for a price to be fixed by Kusum a hardware engineer. However, before the delivery of the laptop, Kartik changed his mind and did not share any particulars and configuration of the laptop with Kusum, which made her unable to do the valuation. Kusum refused to do valuation.
Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930. **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

1) Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2) In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

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

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

Q-6 Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain-

i. Can Priya take-back the vehicle from Sony?
ii. Will your answer be different, if Priya had not handed over the vehicle to Sony? **(7 Marks PYQ June 24) (MTP Jan 25 Series 2)**

Ans. **Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):**
By virtue of Section 9, the price in a contract of sale may be-
(1) fixed by the contract, or
(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
(3) determined by the course of dealing between the parties.

Agreement to sell at valuation (Section 10):
Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided. However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.
2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

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

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

Q-7 Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930? **(4 Marks PYQ June 23) (RTP June 24)**

Ans. As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed to discuss the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

Q-8 What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. **(RTP Jan 25) (RTP Sept 25) (MTP June 24 Series 3)**

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

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

Q-9 Akash purchased 100 Kgs of wheat from Bhaskar at `80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930. **(RTP Sept 24) (MTP Sept 24 Series 2)**

Ans. As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,
(i) Actual delivery,
(ii) Constructive delivery and
(iii) Symbolic delivery.

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to the seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

On the basis of the above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Akash is not right. He cannot claim the price back.

Q-10 Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. **(MTP Jan 25 Series 1)**

Ans. The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser untill he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

Q-11 Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930. **(MTP June 24 Series 1) (RTP May 25)**

Ans. By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be fixed by the contract, or agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third partyin the following manner:

(a) Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.

(b) In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

(c) However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

In the instant case, Kapil contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Akhilesh. After, Rahul delivered 600 litres Akhilesh denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil.

On the basis of above provisions and facts, Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

Q-12 Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ `1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months. Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which it already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company can recover amount from Ram Bilas Yadav? **(RTP May 25)**

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

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

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

Q-13 Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.
(i) State with reasons whether Shubhangi can recover the amount from the Jeweller.

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? **(RTP Jan 25) (MTP Sept 24 Series 1)**

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

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

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

Q-14 Rajnikant agrees to sell some specific goods coming on a ship name "Titanic" to Chiranjivi which will be delivered on arrival of "Titanic". The ship arrived at the port but goods were not found on the ship. Chiranjivi had to procure the goods from open market at higher price. Afterwards, Chiranjivi sued Rajnikant for recovery of extra payment he made for goods. State with reasons, whether Rajnikant is liable to compensate Chiranjivi under the provisions of the Sale of Goods Act, 1930? **(4 Marks) (MTP Sept 25 Series 2)**

Ans. Section 6(2) of the Sale of Goods Act, 1930 provides the acquisition of goods which depends upon uncertain contingency are called 'Contingent Goods'.
Contingent goods also operate as 'an agreement to sell' and not a 'sale' so far as the question of passing of property to the buyer is concerned. In other words, like the future goods, in the case of contingent goods also, the property does not pass to the buyer at the time of making the contract.
In the instant case, there was an agreement between Rajnikant and Chiranjivi to sell some specific goods coming on a ship name "Titanic" by Rajnikant to Chiranjivi which will be delivered on arrival of "Titanic". On the arrival of ship, it was found that the goods were not on it. Chiranjivi procured the goods from open market at higher price, and he sued Rajnikant for recovery of extra payment he made for goods.
On the basis of above provisions and facts, it is clear that goods under the agreement were contingent goods and the agreement between Rajnikant and Chiranjivi was 'an agreement to sell' and not a 'sale'. The property in goods will be passed only after arrival of goods. As there was no 'Sale' between them, Chiranjivi cannot recover extra payment he made for goods.

Q-15 Contract of sale resembles with contracts of hire-purchase. However, sale is distinguished from hire-purchase. Explain hire-purchase agreement and state any five points of distinction between Sale and Hire-purchase. **(7 Marks PYQ Sep 2025)**

Ans. Contract of sale resembles with contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire Purchase Agreements are governed by the Hire-purchase Act, 1972.
The term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

- Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and
- The property in the goods is to pass to such person on the payment of the last of such instalments, and
- Such person has a right to terminate the agreement at any time before the property so passes

The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Basis of Difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser until he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

UNIT – 2: CONDITIONS & WARRANTIES

Q-1 M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.
Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.
The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.
The Shop owner refused to accept return of the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".

(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? **(Module Q)**

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

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

Q-2 Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ` 125 per kg to which she

agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot.
The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930?
What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? **(Module Q) (RTP Jan 25) (RTP Sept 25) (MTP June 24 Series 3) (MTP Jan 25 Series 1)**

Ans. As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:
(a) the bulk shall correspond with the sample in quality;
(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.
(ii) In the instant case, the buyer does not have any option available to her for grievance redressal.
(iii) In case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, then the seller will be held liable.

Q-3 X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests 'Santro' and X accordingly buys it from Y. The car turns out to be unfit for touring purposes. What remedy X is having now under the Sale of Goods Act, 1930? **(Module Q)**

Ans. Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car.

X is therefore entitled to reject the car and have refund of the price.

Q-4 Mrs. G bought a tweed coat from P. When she used the coat she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs. G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930? **(Module Q)**

Ans. According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

Q-5 Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930. **(Module Q) (MTP Sept 24 Series 2)**

Ans. In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages.

Q-6 A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930? **(Module Q)**

Ans. This is a case related to implied condition as to wholesomeness which provides that the eatables and provisions must be wholesome that is they must be fit for human consumption. In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and can also claim damages from the seller.

Q-7 Q asked P, the seller for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, machine delivered and was found unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act,1930 discuss whether Mr. P is right in refusing to exchange the washing machine? **(Module Q) (MTP Sept 24 Series 1)**

Ans. According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per

sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose. Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

Q-8 Discuss the various types of implied warranties as per the Sale of Goods Act, 1930. **(3 Marks PYQ Dec 23)**

Ans. Various types of implied warranties are covered under Sections 14 and 16 of the Sale of Goods Act, 1930 which are as follows:

1. Warranty as to undisturbed possession [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
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.

Q-9 Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930. **(4 Marks PYQ June 23)**

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

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

In this case, M received the goods by sample from L but since the goods were not according to the sample, M can reject the goods and can sue L.

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

Q-10 What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act. **(RTP Jan 25)**

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

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

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

(c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

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

1. Warranty as to undisturbed possession [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

   Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.
4. Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

   If there is a breach of warranty, the seller may be liable in damages.

Q-11 AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes, customized as per the requirement of the customers. They dealt with Silk, Organdie, cotton, khadi, chiffon and many other different varieties of cloth.
Mrs. Reema, a customer, came to the shop and asked for a specific type of cloth suitable for making a suit for her daughter's birthday. She specifically mentioned that she required cotton silk cloth which is best suited for the purpose.
The Shop owner agreed and arranged the cloth pieces cut into as per the buyers' requirements.
When Reema went to the tailor to get the suit stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It was heavily starched and not suitable for making the suit that Reema desired for. The Tailor asked Reema to return the cotton organdie cloth as it would not meet his requirements.

The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold.
With reference to the doctrine of "Caveat Emptor' explain the duty of the buyer as well as the seller. Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement? **(RTP Sept 24)**

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

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:
(i) Fitness as to quality or use
(ii) Goods purchased under patent or brand name
(iii) Goods sold by description
(iv) Goods of Merchantable Quality
(v) Sale by sample
(vi) Goods by sample as well as description
(vii) Trade usage
(viii) Seller actively conceals a defect or is guilty of fraud

Based on the above provision and facts given in the question, it can be concluded that Mrs. Reema is entitled to get the money back or the right kind of cloth as required to serve her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by the buyer. [Section 16(1) of the Sale of Goods Act, 1930].

Q-12 Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prakash agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, ask the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

(a) State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?
(b) Will your answer be different if Prakash does not taste the sweets? **(RTP June 24)**

Ans. By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.

(b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prakash can return the sweets and avoid the contract.

Q-13 Write the exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. **(MTP June 24 Series 2)**

Ans. The doctrine of Caveat Emptor given under the Sale of Goods Act, 1930 is subject to the following exceptions:
(i) Fitness as to quality or use
(ii) Goods purchased under patent or brand name
(iii) Goods sold by description
(iv) Goods of Merchantable Quality
(v) Sale by sample
(vi) Goods by sample as well as description
(vii) Trade usage
(viii) Seller actively conceals a defect or is guilty of fraud

Q-14 Adarsh visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car. **(3 Marks PYQ Jan 25) (MTP May 25 Series 2)**

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

There are two requirements for this condition to apply:
(a) Goods should be bought by description.
(b) The seller should be a dealer in goods of that description.
Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as

goods of that description. It does not imply any legal right or legal title to sell.

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.

Therefore, Adarsh can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.

Q-15 Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. The company informed that tins would be packed in the boxes each containing 50 tins. On

delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part of the contract. Amjuice Ltd. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930? **(MTP Series 1 May 25)**

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

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

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

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

Q-16 Anant needs an air conditioner for his room. For this purpose, he approaches M/s Frontline Electronics. The sales manager of M/s Frontline Electronics said that its technician will visit the room of Anant and there after they will suggest the air conditioner suitable for his room. After visiting the room, the technician suggests that a split AC of 1 tonne capacity will be sufficient for his room. On this advice, he purchases the suggested AC but after sometimes Anant found that AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it. Referring to the provisions of the Sale of Goods Act, 1930, whether Anant can avoid the contract after installation? **(7 Marks) (MTP Sept 25 Series 2)**

Ans. According to Section 16(1) of the Sale of Goods Act, 1930, there is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:
(a) The buyer should have made known to the seller the particular purpose for which goods are required.
(b) The buyer should rely on the skill and judgement of the seller.
(c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.
In the instant case, Anant approaches M/s Frontline Electronics for purchasing an AC. The technician of M/s Frontline Electronics visits the room of Anant where AC to be installed and on the suggestion of M/s Frontline Electronics a split AC of 1 tonne capacity is installed. But AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but

M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it.
On the basis of above provisions and facts, undoubtedly Anant purchases AC only on the suggestion of M/s Frontline Electronics. AC is not fit and suitable for the room area of Anant, hence he can avoid the contract.

Q-17 Mr. Rahul, a wholesale trader in Delhi, placed an order with Mr. Kapil, a textile merchant, for 50 rolls of "premium silk cloth" at an agreed price. It was clearly mentioned that the cloth should be of premium-quality silk and suitable for manufacturing wedding garments. Mr. Kapil delivered the goods on the scheduled date. On a casual examination at the time of delivery, the rolls appeared to be fine, so Rahul accepted them. However, later, while cutting and using the cloth for tailoring, it was discovered that the rolls contained a mixture of synthetic fibers and had hidden defects such as small holes and stains. These defects made the cloth unfit for making wedding garments, causing heavy losses to Rahul. When Rahul demanded a refund, Kapil refused, contending that Rahul had already inspected the goods and accepted delivery.
State, with reasons, whether Rahul can reject the goods and recover the price under the Sale of Goods Act, 1930. **(RTP Jan 26)**

Ans. As per Section 15 of the Sale of Goods Act, 1930, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. Further, as per Section 16(2), when goods are bought by description from a seller who deals in such goods, there is an implied condition that they shall be of merchantable quality. However, if the buyer has examined the goods, the seller is not liable for defects which such examination ought to haverevealed. But where the defects are latent and cannot be discovered on ordinary inspection, the seller remains liable.

In the present case, Rahul, a trader, purchased 50 rolls of "premium silk cloth" from Kapil for the specific purpose of manufacturing wedding garments. On a casual inspection at the time of delivery, the cloth appeared to be fine. However, when used for tailoring, it was discovered that the fabric contained synthetic fibers and had hidden holes and stains. These defects were not visible during a simple inspection at the time of delivery but made the cloth unfit for its intended purpose. Kapil refused to refund the amount, stating that Rahul had already accepted the goods.

On the basis of the above provisions and facts, it is clear that the cloth did not correspond with its description of "premium silk" and was also not of merchantable quality. The defects were latent and could not have been noticed on ordinary inspection. Hence, Rahul is entitled to reject the goods and recover the price. Kapil cannot avoid liability merely on the ground that casual inspection was done by Rahul.

Q-18 For the purpose of making uniforms for the employees, VK bought dark blue coloured cloth from PK. But did not disclose to the PK the purpose of the said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps and boots. Advise VK whether he is entitled to have any remedy, as per the provisions of the Sale of Goods Act, 1930. **(3 Marks PYQ Sep 2025)**

Ans. According to Section 16(1) of the Sale of Goods Act, 1930, normally in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied.

The general rule is that of "Caveat Emptor" that is "let the buyer beware".

But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, VK purchased the dark blue coloured cloth from PK without informing him i.e. uniforms would be prepared and used by employees. Therefore, VK cannot make PK responsible on the ground that cloth was found unfit. VK cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from PK. In view of the above, VK will not succeed in getting any remedy as per the provisions of the Sale of Goods Act, 1930.

Q-19 Ms. S visits an electronic store and asks for a laptop suitable for high-end graphic design work. The salesman recommends a specific model, assuring her that it will meet her needs. Relying on this advice, Ms. S purchases the laptop. However, after using it, she realises that the laptop lacks the necessary processing power and graphics capability for her work. Can Ms. S take legal action against the seller under the Sale of Goods Act, 1930? Justify your answer. **(3 Marks PYQ Sep 2025)**

Ans. Fitness as to Quality or Use [Section 16 (1) of the Sale of Goods Act, 1930] According to Section 16(1) of the Sale of Goods Act, 1930 there is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:
1. The buyer should have made known to the seller the particular purpose for which goods are required.
2. The buyer should rely on the skill and judgement of the seller.
3. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.
In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be used only for one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

In the instant case, Ms. S clearly informed the Seller that she needed a laptop for high end graphic design work. The Seller recommended a model, creating an implied condition that it would be suitable for that purpose. The laptop failed to meet the required performance standards, breaching the implied condition of fitness.

Ms. S can take legal action against the seller. The seller breached the implied condition as to fitness for purpose, since the laptop recommended was not suitable for high-end graphic design work.

Q-20 Mr. S was going through severe financial hardships. His wife suggested to take a gold loan. On 15th January 2025, he pledged his wife's jewellery worth ` 30 lakhs with one of his friend Mr. R and took a loan of ` 25 lakhs. On 17th January 2025, he sold total jewellery for ` 28 lakhs to M/s RL Jewellers Pitampura. The jeweller purchased it in good faith without knowing the fact that the jewellery was already pledged. After all this, Mr. S declared himself insolvent. When Mr. R came to know about this, he filed a suit against M/s RL

Jewellers. But M/s RL Jewellers contended that they were unaware about pledge. With reference to provisions of the Sale of Goods Act, 1930 what is the remedial action available to Mr. R? **(4 Marks PYQ Sep 2025)**

Ans. According to Section 30(1) of the Sale of Goods Act, 1930, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier.

A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.

Therefore, in the instant case, RL Jewellers have got good title over the jewellery sold by Mr. S and Mr. R cannot take any action against RL Jewellers. However, Since Mr. S has violated the condition of pledge, he can claim only from the property of Mr. S as he has become insolvent.

ALTERNATE ANSWER

Condition as to Title [Section 14(a)]: In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that
(a) in case of a sale, he has a right to sell the goods, and
(b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.
In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

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.

In every agreement of sale, it is an implied condition that the Seller will have a right to sell the goods at the time when the property is to pass. In the above case Mr. S was not real owner as he already pledges the jewellery to Mr. R.

On the other hand, it is implied warranty that the goods will be free from any charge and encumbrance. In above case Mr. S has not disclosed encumbrance to Jewellers and sold jewellery.

Thus, M/s RL Jewellers will not be liable to return the jewellery for which he already paid. Mr. R can file a suit against Mr. S. But here in this situation S declared himself insolvent. So, Mr. R can recover from property of Mr. S only

UNIT – 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

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

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

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

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

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

(2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of goods by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

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

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

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

(8) Sale under the provisions of other Acts:

(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Q-2 J the owner of a Fiat car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than ` 50,000. The agent sells the car for ` 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed. **(Module Q)**

Ans. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

(1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.

(2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.

(3) The buyer should act in good faith.

(4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. We assume the agent P acted in the ordinary course of business and sold the car to buyer A in good faith. Therefore A, the buyer obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

Q-3 Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already

packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent? **(Module Q)**

Ans. Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained. Also where there is contract for the sale of unascertained or future goods by description, the property in the goods thereupon passes to the buyer. when goods of that description are put in a deliverable state and are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, Such assent may be express or implied.

Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the goods out of the bulk and he has sent his men for the same purpose.

Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

(i) Where the bales have been selected with the consent of the buyer's representatives:
In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

(ii) Where the bales have not been selected with the consent of buyer's representatives:
In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely.

Q-4 Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. **(Module Q)**

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

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

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

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

Q-5 A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not? **(Module Q)**

Ans. According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:-

(i) One of the several joint owners has the sole possession of them.
(ii) Possession of the goods is by the permission of the co-owners.
(iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.

The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

Q-6 X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why? **(Module Q)**

Ans. According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:-

(i) The seller has done his act of putting the goods in a deliverable state and
(ii) The buyer has knowledge of it.

Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case,

according to the provisions of law, for 150 tons of wheat, sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

The wheat which was put in the sacks fulfils both the conditions that are:-
(1) The wheat is put in a deliverable state in the sacks.
(2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

Q-7 The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930? **(Module Q)**

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

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

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

In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.

When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These 5 tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

Q-8 A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A file a suit against B for the recovery of price. Can he recover the price? **(Module Q)**

Ans. A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet. Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period.

Q-9 M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.
On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties? **(4 Marks PYQ Sept 24)**

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

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

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

ANSWER TO SECOND PART
In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

ALTERNATE ANSWER TO SECOND PART
Section 13 of the Sale of the Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.
In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

According to above stated provision, there is a breach of condition, and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the entire quantity to fulfil his other contracts with other parties and claim damages.

Q-10 Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok. **(4 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

Referring to the above provisions, we can analyse the situation given in the question. Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh. Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

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

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

Q-11 Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930. **(3 Marks PYQ Sept 24) (RTP May 25)**

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

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

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

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

Q-12 J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.
The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?
Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930, **(7 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 2)**

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

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

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

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

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

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

Q-13 Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. **(4 Marks PYQ Nov22) (RTP Sept 25) (MTP June 24 Series 1) (MTP June 24 Series 3)**

Ans. **Sale of unascertained goods and Appropriation:**
Where there is a contract for the sale of unascertained goods by description and goods of that description are in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

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

The essentials elements are:

(i) There is a contract for the sale of unascertained or future goods.

(ii) The goods should conform to the description and quality stated in the contract.

(iii) The goods must be in a deliverable state.

(iv) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.

(v) The appropriation must be made by:

(i) the seller with the assent of the buyer; or

(ii) the buyer with the assent of the seller.

(vi) The assent may be express or implied.

(vii) The assent may be given either before or after appropriation.

Q-14 Samuel purchased a Television set from Arun, the owner of Gada Electronics, on the condition that for the first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arun demands the price of Television set from Samuel. Whether Samuel is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss? **(RTP June 24) (RTP Sept 24)**

Ans. According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms, the property passes to the buyer:

(i) when he signifies his approval or acceptance to the seller,
(ii) when he does any other act adopting the transaction, and
(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.
Samuel purchases a Television set from Arun, the owner of Gada Electronics, on sale or approval for three days. Before Samuel could take any decision, the Television set spoiled due to earthquake.

According to the above provisions and fact, the property has not been passed to Samuel i.e. buyer as no condition of Section 24 is satisfied. Hence, risk is not passed to the buyer and the agreement is thereby avoided. Samuel is not liable to pay the price. The loss finally should be borne by Seller, Mr. Arun.

Q-15 Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930.

Ans. In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:
(1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

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

(2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

(5) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].
However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

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

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

(8) Sale under the provisions of other Acts:
(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Q-16 Mr. G sold some goods to Mr. H for a certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged. Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending? **(RTP Sept 25) (MTP June 24 Series 2)**

Ans. According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

Q-17 i) MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in a

deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.
On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss? What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract? **(4 Marks)**

(ii) A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930. (3 Marks) **(PYQ Jan 25) (MTP May 25 Series 2) (MTP Sept 25 Series 1)**

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

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

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

Therefore, PQR Enterprises will suffer the loss.

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

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

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

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

Q-18 The Institute of Science, Pune (the buyer), placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund. **(4 Marks PYQ Jan 25) (MTP May 25 Series 2)**

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

In the instant case, the Institute of Science, Pune placed an order for various chemicals worth ` 1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science, Pune (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

Q-19 Saurabh purchased electric scooter of Vivek for ` 5000 only on the gun point. Vivek decided to file the complaint and to avoid the contract on the basis of coercion applied against him by Saurabh. But before he could do that, Saurabh sold the scooter to Vinay who had no idea about the situation on which the scooter was purchased by Saurabh. Vivek sued Saurabh and Vinay for recovery of scooter. Referring to the provisions of the Sale of Goods Act, 1930, whether Vivek was correct in his decision? **(RTP May 25) (MTP Sept 25 Series 2)**

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

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

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

Q-20 "Explain the rules relating to the delivery of goods under the Sale of Goods Act, 1930" with reference to the following:

(i) Effect of part delivery

(ii) Place of delivery

(iii) Delivery of wrong quantity." **(MTP May 25 Series 1)**

Ans. (i) Effect of part delivery (Section 34 of the Sale of Goods Act, 1930): A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

(ii) Place of delivery [Section 36(1)]: Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract,

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

(iii) Delivery of wrong quantity [Section 37]: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]
Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]
Where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole. [Sub-section (3)]
The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Sub-section (4)]

Q-21 S purchased a dress from a reputed showroom and made the payment in cash. The dress she purchased require some alteration. The shopkeeper assured S that it would take just one day to get the dress altered. It was agreed that once the dress was altered the shopkeeper would inform S through phone and she would collect the dress. Next day, by evening the dress was altered and kept ready to be delivered to S. The shopkeeper however forgot to inform S that the dress was ready.
In the meantime, a short circuit occurred near the delivery counter of the shop and some packets ready for delivery caught fire. After waiting for 10 days, when, S went to collect her dress she was informed that she came late and her dress was burnt in fire. S, then asked for refund of money what she paid. The shopkeeper refused, by saying that the dress was kept ready the very next day of purchase and the loss due to fire occurred after a week. He refused to bear the liability by saying that if S had collected the dress on time, it would not have been burnt. S insisted that she was waiting for a call from the shop and thus, entitled to claim the refund of cost of dress.
Examine, with reference to the provisions of the Sale of Goods Act, 1930, whether shopkeeper will be liable to refund the cost of dress to S? **(7 Marks) (PYQ May 25)**

Ans. Specific goods to be put into a deliverable state (Section 21 of the Sale of Goods Act, 1930): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the

property does not pass until such thing is done and the buyer has notice thereof.

According to section 26, "unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".

However, Section 26 also lays down an exception to the rule that 'risk follows ownership.' It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

In the instant case, S had paid in full and purchased a specific dress but the dress required alteration, and it was agreed that the shopkeeper would inform S after alteration for collection. The ownership had already passed to S when she paid for the dress, subject to alteration. The delivery was conditional upon the shopkeeper informing S after alteration.

Even though the ownership may have passed to S, the seller (shopkeeper) failed to complete the delivery by not informing S. Under Section 26, when delivery is delayed due to the fault of the seller, the loss falls upon the party at fault.

Therefore, the shopkeeper is liable to refund the cost of the dress to S.

Alternative Answer
The given problem is based on the concept "Agreement to Sell" under section 4 of the Sale of Goods Act, 1930. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – "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, it is called an agreement to sell." Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date. Hence, in an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

In the instant case, though S had paid and purchased a specific dress, but the dress required alteration. Shopkeeper assured S that it would take just one day to get the dress altered and it was agreed that he would inform S after alteration for collection. This reflects that transfer or property in goods is to be transferred subject to fulfilment of the condition i.e., after the alteration.

Further, Reservation of right of disposal given under Section 25, is applicable here. This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Therefore, still the ownership lies with the seller on account of non-fulfilment of condition as to informing to the S that the dress is altered and is ready.

Further the plea taken by Shopkeeper that 10 days were passed after the alteration done and he is not liable for damage caused, is not justifiable on account of not being a reasonable circumstance and a ground.

Hence, in the light of the given facts, the shopkeeper is liable to refund the cost of the dress to S.

Q-22 With reference to provisions of the Sale of Goods Act, 1930, answer the following:

(i) What do you mean by Reservation of right of disposal? State the circumstances under which right of disposal may be reserved. **(RTP Sept 25)**

(ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer losses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition. **(7 Marks) (PYQ May 25) (MTP Sept 25 Series 1)**

Ans. (i) Reservation of right of disposal: Section 25 of the Sale of Goods Act, 1930, preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

(1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.

(2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

(ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

(i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

(iii) Where the contract is non-severable and the buyer has accepted either 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.

Q-23 Mr. Varun, a laptop distributor, delivered 20 laptops to his friend Mr. Rohit on the condition of "sale on approval or return within 10 days." Rohit neither returned the laptops within the stipulated period nor informed Varun of any rejection. Instead, he kept the laptops in his office showroom and sold 5 of them to Mr. Anuj, claiming to be the absolute owner. Anuj purchased the laptops in good faith, paid full consideration, and even issued a receipt.

After 15 days, Varun demanded the return of all the laptops, including those sold to Anuj. Rohit refused, arguing that he had acted as the owner. Anuj also defended himself, claiming that he was a bona fide purchaser for value. Varun, however, relied on the principle that "no one can transfer a better title than he himself has."

Decide, under the Sale of Goods Act, 1930, whether Anuj has acquired a valid title and whether Varun can recover the goods. **(RTP Jan 26)**

Ans. Section 24 of the Sale of Goods Act, 1930 states that when goods are delivered on approval or "sale or return" basis, the property passes to the buyer if he accepts them, does any act adopting the transaction such as reselling, or retains the goods beyond the fixed or reasonable time.

Section 27 provides the general rule that no one can transfer a better title than he himself has. But the Act recognizes exceptions to protect bona fide purchasers.

Under Section 30(1), if a seller in possession of goods resells them to a buyer in good faith, such buyer gets a valid title. Similarly, under Section 30(2), if a buyer with the seller's consent obtains possession and resells before ownership has passed the sub-buyer in good faith also acquires good title.

Thus, once goods on approval are retained beyond time or resold, ownership passes, and a purchaser in good faith is protected. In the present case, Varun delivered 20 laptops to Rohit on approval for 10 days. Rohit neither rejected nor returned the goods but displayed them in his showroom and sold 5 laptops to Anuj. This constituted an act of adopting the transaction under Section 24; therefore, ownership of all the laptops passed to Rohit. Since Anuj purchased them in good faith, for value, and without notice of Varun's rights, he falls within the exceptions under Sections 27 and 30.

Therefore, it is clear that by retaining the laptops beyond approval period and selling part of them, Rohit became the owner of the goods. His sale to Anuj was valid, and Anuj, being a bona fide purchaser, acquired a good title. Varun cannot recover the laptops from Anuj but may claim the price of the remaining from Rohit. Hence, Varun's contention is not legally sustainable.

Q-24 Explain the rule relating to the passing of property in specific or ascertained goods under Section 19 of the Sale of Goods Act, 1930. How is the intention of the parties as to the passing of property ascertained? **(RTP Jan 26)**

Ans. Property (Specific or ascertained goods) passes when intended to pass (Section 19 of the Sale of Goods Act, 1930): Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. [sub-section (1)] For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. [sub-section (2)] Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. [sub-section (3)]

Stages of goods while passing of property

1. Specific goods in a deliverable state (Section 20): Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

2. Specific goods to be put into a deliverable state (Section 21): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

3. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22): Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Q-25 X offered to sell Y a machine for ` 5,00,000/-. Y refused to buy it unless the machine is made into a running condition. X agreed to do the same but while the machine was being repaired, it was destroyed without the fault of any person. With reference to the relevant provisions of the Sale of Goods Act, 1930 examine whether X can recover the price from Y? **(4 Marks PYQ Sep 2025)**

Ans. According to the provisions of the Sale of Goods Act, 1930, in case of 'specific goods', the property shall pass on the formation of contract only if the goods are specific (Section 19).

Goods are in a deliverable state i.e. the seller has done all that he is required to do, to put the goods in such a state that the buyer shall be bound to take the delivery of the same (Section 20).

If the seller is bound to do something in respect of the goods to put them in a deliverable state and he is not yet done the same, then the possession of goods shall pass on to the

buyer in the future, when the seller does what is required to do and brings the same to the knowledge of the buyer. (Section 21).
In the given case, the seller X was required to conduct repairs in respect of the machine before he buys the same. Thus, the possession of property intends to take place when the repairs are conducted by X and Y has the knowledge of the same. Since the machine is destroyed before repairs could be completed, the possession of property has not taken place.

The risk of loss vests with X and therefore cannot recover the price from Y.

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

In the instant case, the machine was destroyed without the fault of any person while being repaired. X cannot recover the price from Y as the performance of contract became impossible due to supervening impossibility.

UNIT – 4: UNPAID SELLER

Q-1 When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court? **(Module Q)**

Ans. A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

(i) the goods have been sold without any stipulation as to credit;
(ii) the goods have been sold on credit, but the term of credit has expired;
(iii) the buyer becomes insolvent.

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.

Termination of lien: An unpaid seller losses his right of lien thereon-

(i) 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;
(ii) When the buyer or his agent lawfully obtains possession of the goods;

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

Q-2 Mr. D sold some goods to Mr. E for ` 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. **(Module Q)**

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

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

(i) Suit for price (Section 55): In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) Suit for damages for non-acceptance (Section 56): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) Suit for interest [Section 61]: If there is no specific agreement between Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Q-3 Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Can Ram exercise right of stopping the goods in transit? **(Module Q) (MTP June 24 Series 2) (MTP Jan 25 Series 2)**

Ans. Right of stoppage of goods in transit: The problem is based on Section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

(i) The seller must be unpaid
(ii) He must have parted with the possession of goods
(iii) The goods must be in transit
(iv) The buyer must have become insolvent
(v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer.

Q-4 Suraj sold his car to Sohan for ` 75,000. After inspection and satisfaction, Sohan paid ` 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan. **(Module Q) (RTP Sept 24)**

Ans. As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

(ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-
(1) Interest on the remaining amount
(2) Interest during the pendency of the suit.
(3) Costs of the proceedings.

Q-5 A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? **(Module Q) (MTP June 24 Series 1)**

Ans. Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sales of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

Q-6 A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller? **(Module Q)**

Ans. The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.

This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-

(i) The buyer has not paid the total price to the seller
(ii) The seller has delivered the goods to a carrier thereby losing his right of lien
(iii) The buyer has become insolvent
(iv) The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)

In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.

According to the Sale of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

Q-7 J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930? **(Module Q)**

Ans. The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:-

(i) When the buyer has made the transaction with the consent of the seller
(ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine.

Q-8 Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? **(Module Q) (RTP Sept 25) (MTP June 24 Series 3)**

Ans. By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Deepa gives the highest bid in the auction for the sale of an antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

Q-9 Ansari of Jaipur sold 100 smart TV set @ ` 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ` 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and

suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.

Answer the following questions under the provisions of the Sale of Goods Act, 1930:
(A) Whether Ansari has right to stop the goods in transit?
(B) Whether Baburam can claim loss suffered due to nondelivery from Ansari? **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

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

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

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

Q-10 Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:
(A) Bid by seller with or without notification
(B) Bidder to retract from his bid
(C) Effect of pretending bidding **(4 Marks PYQ Sept 24) (RTP May 25)**

Ans. Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:
(A) Bid with notification: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

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

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

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

Q-11 PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in

Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10.am in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:
Mr. Neel ` 5.70 lakh

Mr. Raj ` 4.85 lakh

Mr. Dev` 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

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

Mr. Dheer ` 15 lakh

Mr. Madhu (on behalf of R N & Associates) ` 15.20 lakh

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

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not? **(7 Marks PYQ June 24)**

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

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

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

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

(iii) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

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

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

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

Q-12 Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930? **(6 Marks PYQ Dec 23)**

Ans. Seller's lien (Section 47 of the Sale of Goods Act, 1930): 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.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he in possession of the goods as agent or bailee for the buyer.

As per the provisions of Section 48, where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-
(a) 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;
(b) when the buyer or his agent lawfully obtains possession of the goods;
(c) by waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. [Sub-section (2)]

Q-13 An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. **(2 Marks PYQ June 23) (MTP Sept 24 Series 2)**

Ans. According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.

In the given question, the auction sale is complete on 7th March, 2023.

Q-14 What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? **(6 Marks PYQ Nov22)**

Ans. **Right of re-sale [Section 54 of the Sale of Goods Act, 1930]:**

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

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

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

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

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

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

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

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

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

(v) 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.

(vi) 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".

Q-15 Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(RTP Jan 25) (MTP June 24 Series 1)**

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

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

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

Q-16 Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930:

(i) State, whether Mr. Shankar was right in his decision?
(ii) What would be your answer if Mr. Ganesh became insolvent within five days of contract? **(RTP June 24) (MTP May 25 Series 1)**

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

(a) The whole of the price has not been paid or tendered.
(b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:
(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)
(b) where goods have been sold on credit, but the term of credit has expired; or
(c) where the buyer becomes insolvent.

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

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

Q-17 What are the rights of a buyer, when seller commits a breach of contract under the provisions of the Sale of Goods Act, 1930? (7 Marks) **(PYQ Jan 25) (MTP Sept 24 Series 1) (RTP Jan 26)**

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

seller:

Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Suit for specific performance (Section 58): Where the seller commits breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific and where damages would not be an adequate remedy.

Suit for breach of warranty (Section 59): Where there is breach of warranty on the part of the seller, or where the buyer elects to or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –
(i) set up against the seller the breach of warranty in diminution or extinction of the price; or
(ii) sue the seller for damages for breach of warranty.

Repudiation of contract before due date (Section 60): Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as:
• subsisting and wait till the date of delivery, or
• he may treat the contract as rescinded and sue for damages for the breach.

Suit for interest:

(1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refnd 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.

Q-18 Explain the concept of the "Right of Re-sale" under the Sale of Goods Act, 1930. Under what circumstances can an unpaid seller exercise this right? **(MTP May 25 Series 2)**

Ans. Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

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". This is the additional right used in case of agreement to sell.

Q-19 (i) P sold certain antique items to Q for ` 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment. Q transferred a sum of ` 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency. By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods. According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only` 20,000/- was left to be paid? **(4 Marks)**

(ii) An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest bidder". During the auction, L bids for an antique sculpture, worth ` 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees.

Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930. **(3 Marks) (PYQ May 25) (MTP Sept 25 Series 1)**

Ans. **(i) Rights of lien (Section 47 of the Sale of Goods Act, 1930)**
An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.
Exercise of right of lien: This right can be exercised by him in the following cases only:
(a) where goods have been sold without any stipulation of credit; (i.e., on cash sale)
(b) where goods have been sold on credit but the term of credit has expired; or
(c) where the buyer becomes insolvent.

In the instant case, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024. Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ` 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

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

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. Until such announcement is made, any bidder may retract from his bid.

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce "you are the highest bidder".

Therefore, L's claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.

LESSON-4

UNIT – 1: GENERAL NATURE OF PARTNERSHIP

Q-1 Mr. XU and Mr. YU are partners in a partnership firm. Mr. XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader believing MU as partner supplied 50 Laptops to the firm on credit. After expiry of credit period, ZU did not get amount of Laptop sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of price. Does MU is liable for such purpose? **(Module Q)**

Ans. As per Section 28 of Indian Partnership Act, 1932, Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical. In the given case, MU (the Manager) is also liable for the price because he becomes a partner by holding out as per Section 28 of Indian Partnership Act, 1932.

Q-2 Ms. Lucy while drafting partnership deed taken care of few important points. What are those points? She wants to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed? **(Module Q)**

Ans. Ms. Lucy while drafting partnership deed must take care of following important points:

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally. 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'.
- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Lucy:

- 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.

Note: Ms. Lucy may add or delete any provision according to the needs of the partnership firm.

Q-3 State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

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

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper supplied to X?

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? **(Module Q) (RTP May 2025) (MTP Sept 24 Series 2)**

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

(i) Yes, it is a case of partnership.

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

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

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

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

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

Q-4 Sate giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act,1932.

(i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership? **(2 Marks)**

(ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is liable to a paper dealer for paper supplied to X to print Y's book? **(2 Marks)**

(iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent

which is divided between both. Does this arrangement constitute a partnership between A and B? **(2 Marks) (6 Marks PYQ Dec 23)**

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

Yes, it is a case of partnership.

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

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

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

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

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

Q-5 What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932? **(4 Marks PYQ Nov22) (RTP May 2025) (MTP Sept 24 Series 1)**

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

1. Formation

   Partnership always arises out of a contract, express or implied.

   Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.

2. Implied agency

   A partner is the agent of the other partners.

   A co-owner is not the agent of other co-owners.

3. Nature of interest

   There is community of interest which means that profits and losses must have to be shared.

   Co-ownership does not necessarily involve sharing of profits and losses.

4. Transfer of interest

   A share in the partnership is transferred only by the consent of other partners.

   A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

Q-6 State whether the following are partnerships under the Indian Partnership Act, 1932:

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

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

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

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

(v) A and B, co-owners share between themselves the rent derived from a piece of land. **(RTP Sept 24)**

Ans.

i. Yes, this is a case of partnership as there exists the element of doing business and sharing of profits equally.

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

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

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

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

Q-7 Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ` 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ` 2800 and ` 200 as a penalty to resume the electricity connection. Mr. John claimed ` 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ` 1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Explain, whether under the provision of the Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ` 3000 to Mr. John? **(RTP June 24) (RTP Sept 25) (MTP June 24 Series 3)**

Ans. According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved:

1. There must be an agreement between all the persons concerned;
2. The agreement must be to carry on some business;
3. The agreement must be to share the profits of a business and
4. The business was carried on by all or any of them acting for all.

On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no

partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ` 1500. Mr. John has to claim the rest of ` 1500 from Mr. Raheem.

Q-8 "Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932? **(MTP June 24 Series 2)**

Ans. Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

i. There was an agreement between all the persons concerned
ii. The agreement was to share the profits of a business and
iii. the business was carried on by all or any of them acting for all.

1. Agreement: Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.
2. Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Q-9 Define partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. **(MTP June 24 Series 1)**

Ans. '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.
Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm', and the name under which their business is carried on is called the 'firm name'.

Elements Of Partnership *(whether to explain elements or not depends on marks allotted to the question)*
Partnership is an association of two or more persons.

The partnership must be a result of an agreement entered into by all persons concerned.
Partnership is organised to carry on some business
The agreement must be to share the profits of the business.
The business must be carried on by all or any of them acting for all.

Q-10 Explain the following terms under the Indian Partnership Act, 1932:

i. Partner by holding out

ii. Nominal Partner **(4 Marks PYQ Jan 2025)**

Ans.

i. Partner by holding out (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.

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

Q-11 "Partners in a firm may be classified into various types based on the extent of their liability." Describe the following:

a. Dormant Partner
b. Nominal Partner
c. Partner in profits only
d. Partner by holding out **(MTP May 25 Series 1)**

Ans.

a. Sleeping or Dormant Partner: It is a person who is a partner by agreement, and who does not actively take part in the conduct of the partnership business.

They share profits and losses and are liable to the third parties for all acts of the firm. They are, however not required to give public notice of their retirement from the firm.

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

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

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

d. Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

Q-12 What is a Partnership Deed? Explain its significance and list the key contents typically included in a partnership deed. Why is it advisable to have the deed in writing, even though it is not mandatory? **(MTP May 25 Series 2)**

Ans. **Partnership Deed**

Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information:-

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

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

Q-13 Mr. Arun and Mr. Varun are brothers employed in a private company in Delhi. Out of their joint savings, they purchased a plot of land in Noida and constructed five commercial shops on it. These shops were later rented out to different tenants. It was mutually agreed that both would equally share the monthly rent received. They also decided to contribute jointly towards property tax and repair expenses.

In March 2025, one tenant defaulted in paying rent of `50,000. Varun claimed the entire arrears from Arun, stating that both were "partners" in the property business and, hence, Arun, being one of the partners, was liable for the whole amount. Arun, however, refused and argued that they were not partners but only co-owners; therefore, he was not liable to pay Varun's share of the defaulted rent.

Decide, with reasons, whether Arun and Varun can be regarded as partners under the Indian Partnership Act, 1932. **(RTP Jan 26)**

Ans. According to Section 4, Section 5 and Section 6 of the Indian Partnership Act, 1932 – • Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

- The following essentials must exist to constitute a partnership: o There must be an agreement between the parties; o The agreement must be to carry on a business; o The

agreement must be to share profits of such business; and o The business must be carried on by all or any of them acting for all (mutual agency).

- Partnership arises from contract and not from status.
- The real relation between the parties, as shown by all relevant facts, determines whether a partnership exists.
- In contrast, co-ownership arises by inheritance or purchase and does not necessarily involve business or mutual agency

In the present case, Arun and Varun, while working in jobs, purchased a piece of land with their joint savings. They built shops on it and rented them out, dividing the rental income equally. When a tenant defaulted on paying `50,000, Varun demanded the entire amount from Arun, treating them as "partners." Arun denied this, claiming they were only co-owners of the property and not partners in any business.

On applying the above provisions, it is clear that Arun and Varun are only co-owners and not partners. They never entered into an agreement to carry on a business with a profit motive; they simply invested in property and shared rental income. There is no element of business activity or mutual agency between them.

Therefore, under the Indian Partnership Act, 1932, they cannot be regarded as partners. Arun is liable only for his individual share of the defaulted rent and not for the whole amount.

UNIT – 2: RELATIONS OF PARTNERS

Q-1 State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee? **(Module Q) (RTP June 24) (MTP Jan 25 Series 2)**

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

The rights of such a transferee are as follows:

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

(a) to interfere with the conduct of the business,

(b) to require accounts, or

(c) to inspect books of the firm.

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

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

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

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

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

Q-2 Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm. **(Module Q)**

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

Rights:

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

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

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

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

Q-3 M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. G, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. G was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

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

ii. What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? **(Module Q) (MTP Sept 24 Series 1)**

Ans. **Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):**
A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

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

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

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

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

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

a. the power of expulsion must have existed in a contract between the partners;

b. the power has been exercised by a majority of the partners; and

c. it has been exercised in good faith.

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

Ans. Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm,

then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

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

ii. Interest at the rate of 6 per cent annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A's Legal representatives shall be entitled, at their option to:

a. the 20% shares of profits (as per the partnership deed); or

b. interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Q-5 Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due.
In the light of the Indian Partnership Act, 1932, explain:

i. To what extent X will be liable if he failed to give public notice after attaining majority?

ii. Can Mr. L recover his debt from X? **(Module Q)**

Ans. As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.
However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

A. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

B. His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

i. In the instant case, since, X has failed to give a public notice, he shall become a partner in the M/s ABC & Co. and becomes personally liable to Mr. L, a third party.

ii. In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since X has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. L can recover his debt from him also in the same way as he can recover from any other partner.

Q-6 Mr. A (transferor) transfer his share in a partnership firm to Mr. B (transferee). Mr. B is not entitled for few rights and privileges as Mr. A (transferor) is entitled therefor. Discuss in brief the points for which Mr. B is not entitled during continuance of partnership? **(Module Q)**

Ans. As per Section 29 of Indian Partnership Act, 1932, a transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

In the given case during the continuance of partnership, such transferee Mr. B is not entitled:

- to interfere with the conduct of the business.
- to require accounts.
- to inspect books of the firm.

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

Q-7 Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

i. "If a partner is otherwise expelled; the expulsion is null and void." Discuss. **(4 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

ii. "The partner who is expelled will cease to be liable to the third party for the act of the firm done after expulsion." Analyse. **(2 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

According to Section 33 of the Indian Partnership Act, 1932

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

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

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

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

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

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

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

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

Hence, the statement given is partially correct.

Q-8 Referring to the provisions of the Indian Partnership Act, 1932, answer the following:

i. Ram and Shyam are partners in a partnership firm styled as RS & Co. (the firm). Gopal, a renowned businessman, is their common friend. Ram introduced Gopal to Sundar, a supplier to the firm, as his newly joined partner. Gopal knowing that he is not a partner preferred to keep quiet on such an introduction. This information about Gopal, being a partner of the firm, was shared by Sundar with another businessman Madhav. Next day, Sundar supplied the raw material on credit and Madhav lent ` 5 lakhs to the firm for a short period on the understanding that Gopal is a partner of the firm. On due dates, the firm failed to discharge its liability towards both. Advise Gopal, whether he is liable to Sundar and Madhav for the aforesaid liability of the firm. **(3 Marks PYQ Sept 24) (RTP Jan 25) (MTP Jan 25 Series 1)**

ii. On admission as a new partner, Amar agreed to be liable for the existing debts (referred to as the old debts) of the firm by an agreement signed by the all partners including Amar. Examine, whether Amar will be liable in a suit filed by the creditor against the firm and all existing partners for recovery of the old debt of the firm. **(2 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

iii. Suman, having 10% share in the property of ` 200 lakh of a firm retires from the firm on 31st March, 2023. The firm continues with the business thereafter without final settlement of accounts between the existing and retired partners and earned profits of ` 10 lakh during the financial year ending 31st March, 2024. Suman, in her own interest and in the absence of any provision in the partnership firm on this point, claimed ` 3 lakh from the firm toward the use of her share in the property and profit of the firm which was-rejected by the partners. There is no contract between the partners contrary to the provisions of the Act in this regard. Examine the validity of the amount claimed by Suman under the provisions of the Indian Partnership Act, 1932. **(2 Marks PYQ Sept 24)**

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

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

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

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

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

ii. Rights and liabilities of new partner

The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in

every case to make the transaction operative. Novation is the technical term in a contract for substituted liability, of course, not confined only to case of partnership.

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

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

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

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

In the instant case, Suman is entitled to claim either interest on her share in the property i.e. ` 1,20,000 (6% of ` 20 Lakh) or a share of the profits i.e. ` 1 Lakh (10% of ` 10 Lakh) from the firm for the use of her share in the property.
Therefore, claim of Suman of ` 3 Lakh is not valid.

Q-9 A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C. **(3 Marks PYQ June 24) (RTP Sept 25) (MTP Jan 25 Series 2)**

Ans. According to Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for all acts of the firm done while he is a partner.
As per section 26, the firm is liable to the same extent as the partner for any wrongful act or omission of a partner while acting:
(a) in the ordinary course of the business of the firm, or
(b) with the authority of the partners.

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

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

Q-10 Discuss the rule regarding a partner's implied authority to bind the firm for his acts. Also, explain the situations when the partner has no implied authority to bind the firm. **(6 Marks PYQ Dec 23)**

Ans. As per the provisions of Sections 19(1) read with the provisions of Section 22 of the Indian Partnership Act, 1932, which deal with the implied authority of a partner, provide that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority.

As per the provisions of Section 20 of the 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.

As per the provisions of Section 21 of the Indian Partnership Act, 1932, 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.

As per the provisions of sub-section (2) of Section 19 the Indian Partnership Act, 1932, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

a. Submit a dispute relating to the business of the firm to arbitration;
b. open a banking account on behalf of the firm in his own name;
c. compromise or relinquish any claim or portion of a claim by the firm;
d. withdraw a suit or proceedings filed on behalf of the firm;
e. admit any liability in a suit or proceedings against the firm;
f. acquire immovable property on behalf of the firm;
g. transfer immovable property belonging to the firm; and
h. enter into partnership on behalf of the firm.

Q-11 P, Q and R are partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932. **(6 Marks PYQ June 23)**

Ans. According to sub-section (3) of Section 32 of the Indian Partnership Act, 1932, a retiring partner along with the continuing partners continue to be liable to any 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 a partner.

As per the provisions of Section 28, where a man holds himself out as a partner or allows others to do it, when in fact he is not a partner, he is liable like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.
In the instant case, since Mr. R has not given the public notice of his retirement from the partnership firm and Mr. S believes that Mr. R is a partner, Mr. R will be liable to Mr. S under the provisions of Section 32.

Also Mr. E, who has been introduced as a partner of the firm to which Mr. E has not presumably denied, will also be liable for the payment of 25 fans supplied to the firm on credit along with other partners in terms of the provisions of Section 28 as stated above.
Over and above R and E, P and Q being the partners of the firm along with the firm will also be held liable to S.

Therefore, S can recover the payment from the Firm, P, Q, R and E.

Q-12 What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932? **(5 Marks PYQ June 23)**

Ans. 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.

Q-13 Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of Indian Partnership Act, 1932? **(6 Marks PYQ Nov22) (RTP Sept 25)**

Ans. Expulsion of partner and factors to be kept in mind:
As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except
(i) the power of expulsion must have existed in a contract between the partners;
(ii) the power has been exercised by a majority of the partners; and
(iii) it has been exercised in good faith.
If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm and shall be null and void.

The test of good faith as required under Section 33(1) includes three things:
(i) The expulsion must be in the interest of the partnership
(ii) The partner to be expelled is served with a notice
(iii) He is given an opportunity of being heard.
Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

Q-14 (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?
(ii) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932? **(RTP Jan 25) (MTP June 24 Series 3) (MTP June 24 Series 1)**
(iii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932? **(RTP Jan 25) (MTP June 24 Series 1) (RTP May 25)**

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

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

(iii) Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Q-15 With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner. **(RTP Jan 25) (MTP June 24 Series 3)**

Ans. **Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):**
(i) The insolvent partner cannot be continued as a partner.
(ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
(iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
(iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
(v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Q-16 Sahil, Amit and Kunal were partners in a firm. The firm is a dealer in office furniture. They have regular dealings with M/s AB and Co. for the supply of furniture for their business. On 30th June 2023, one of the partners, Mr. Kunal died in a road accident. The firm ordered M/s AB and Co. to supply the furniture for their business on 25th May 2023, when Kunal was also alive.
Now Sahil and Amit continue the business in the firm's name after Kunal's death. The firm did not give any notice about Kunal's death to the public or the persons dealing with the firm. M/s AB and Co. delivered the furniture to the firm on 25th July 2023. The fact about Kunal's death was known to them at the time of delivery of goods. Afterwards the firm became insolvent and failed to pay the price of furniture to M/s AB and Co. Now M/s AB and Co. has filed a case against the firm for recovery of the price of furniture. With reference to the provisions of Indian Partnership Act, 1932, explain whether Kunal's private estate is also liable for the price of furniture purchased by the firm? **(RTP Sept 24)**

Ans. According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the facts of the case and provisions of law, since the delivery of furniture was made after Kunal's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in Kunal's lifetime. He was already dead when the delivery of goods was made to the firm and also it is not necessary to give any notice either to the public or the persons having dealings with the firm on a death of a partner (Section 35). So, the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

Q-17 Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ` 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony continued getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? **(RTP June 24)**

Ans. By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.

Q-18 A, B & C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is INR 350 per Kilogram. B already had 1000 kg of iron bars in stock which he had purchased before price hike in the market for INR 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of INR 350? Assume there is no contract between the partners regarding the above. **(RTP June 24)**

Ans. According to section 16 of the Indian Partnership Act, 1932, subject to contract between partners –

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

In the given scenario, B had sold iron bar to the firm at the current prevailing market rate of 350 per Kg though he had stock with him which he bought for INR 200 per Kg. Hence, he made an extra profit of INR 150/Kg. This arises purely out of transactions with the firm. Hence, B is accountable to the firm for the extra profit earned thereby.

Q-19 Whether a minor may be admitted in the business of a partnership firm? Also, explain the rights of a minor in the partnership firm under the Indian Partnership Act, 1932. **(MTP Sept 24 Series 2)**

Ans. A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights of such a partner will be governed under Section 30 as follows:

Rights:

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

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

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

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

Q-20 State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:
(A) When he opts to become a partner of the same firm.
(B) When he decides not to become a partner. **(MTP Sept 24 Series 1)**

Ans. (A) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

(a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

(b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(B) When he elects not to become a partner:

(a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

(b) His share shall not be liable for any acts of the firm done after the date of the notice.

(c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

Q-21 Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? **(MTP June 24 Series 2) (MTP Sept 24 Series 1)**

Ans. Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)
According to section 16, subject to contract between the partners:

(a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Q-22 Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. **(RTP Sept 25) (MTP June 24 Series 3)**

Ans. Liability of Firm for Misapplication by Partners (Section 27 of Indian Partnership Act, 1932):
The two clauses of Section 27 bring out an important point of distinction between the two categories of cases of misapplication of money by partners.
Clause (a) covers the case where a partner acts within his authority and due to his authority

as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.
On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm, and it is misapplied by any of the partners.

The firm would be liable in both cases.

Q-23 "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. **(MTP June 24 Series 3)**

Ans. "Partner indeed virtually embraces the character of both a principal and an agent": Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm.

A partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all (Section 4). This definition suggests that any of the partners can be the agent of the others.

Section 18 clarifies this position by providing that, subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character of both a principal and an agent. So far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

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

Q-24 P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2023, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.
Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

i. Rights of P & Q to start a competitive business.
ii. Rights of P & Q regarding their share in property of M/S PQRS & Co. **(MTP June 24 Series 2)**

Ans. (i) Rights of outgoing partner to carry on competing business (Section 36 of the Indian Partnership Act, 1932)

(1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

(a) use the firm name,

(b) represent himself as carrying on the business of the firm or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) Although this provision has imposed some restrictions on an outgoing partner, it effectively permits him to carry on a business competing with that of the firm. However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement will not be in restraint of trade if the restraint is reasonable [Section 36 (2)] From the above, we can infer that P & Q can start competitive business in the name of M/S PQ & Co. after following above conditions in the absence of any agreement.

(ii) Right of outgoing partner in certain cases to share subsequent profits (Section 37 of the Indian Partnership Act, 1932) According to Section 37, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm. In the instant case, P & Q can share in property of M/s PQRS & Co. keeping in view of the above provisions.

Q-25 A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sells at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles were continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but could not do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of Indian Partnership Act, 1932? **(RTP Sept 25) (MTP June 24 Series 1)**

Ans. According to Section 13(e) of Indian Partnership Act, 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

In the instant case, M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss.

On the basis of above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

Q-26 A minor admitted to the benefits of a partnership firm is entitled to certain rights and may also have liabilities to third parties for the acts of the firm. Discuss the rights and liabilities (before attaining majority only) of the minor under the Indian Partnership Act, 1932. **(6 Marks PYQ Jan 2025)**

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

(1) Rights:

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

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

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

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

(2) Liabilities:

Before attaining majority:

(a) The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.

(b) Minor has no personal liability for the debts of the firm incurred during his minority.

(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee (which means minor can recover his share in the firm on proportionate basis from official receiver/assignee).

Q-27 P, Q and R, are partners in a construction firm, PQR Associates. P buys cement on behalf of the firm from D. The cement is used in the ordinary course of the firm's business. P uses the cement for his personal purposes. The supplier D, who is unaware of the private use of cement by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the cement was never received by it. Referring to the provisions of the Indian Partnership Act, 1932, answer the followings:
(i) Whether the Firm's contention is tenable?
(ii) What would be your answer if a part of the cement so purchased by P was delivered to the firm by him, and the rest of the cement was used by him for his private use, about which neither the firm nor the supplier were aware? **(7 Marks PYQ Jan 2025) (MTP May 25 Series 2) (MTP Sept 25 Series 1)**

Ans. The given question is based on the Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932. Section 18 deals with the Partner to be an agent of the firm. This means that a partner is the agent of the firm for the purpose of the business of the firm.

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

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

According to section 25, the partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. "Act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.
As per section 26, the firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting:
(a) in the ordinary course of the business of the firm
(b) with the authority of the partners.

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

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

(i) Said Section is applicable only to the act done by partners for the purpose of the business of the firm. In such case, partner act as the agent of the firm for the purpose of the business of the firm. Since in the given case, P, buys cement on behalf of the firm from D in the ordinary course of the firm's business. Therefore, in the given case, firms' contention of refusal to pay the price on the ground that the cement was never received by it, is not tenable.

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

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

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

However, PQR Associates can take action against P, the partner.

Q-28 Amit and Ajay started the business of wholesale trading of sugar. For this purpose, they contributed ` 3,00,000 and ` 1,00,000 respectively. Partnership deed was perfectly prepared but clause regarding share of profit was not mentioned in the deed. Due to the heavy rain, stock of sugar was spoiled, and firm incurred the loss of ` 60,000. Amit asked Ajay to contribute equally to the loss, but Ajay agreed to contribute only 25% to the loss i.e. in the ratio of capital contribution. Referring to the provisions of the Indian Partnership Act, 1932, how much to be contributed by Ajay to firm's loss? **(RTP May 2025)**

Ans. Section 13(b) of the Indian Partnership Act, 1932 provides, partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm. The amount of a partner's share must be ascertained as per the agreement between the partners. If there is no agreement, then every partner is bound to contribute equally for the Firm's business. There is no connection between the proportion in which the partners shall share the profits and the proportion in which they have contributed towards the capital of the firm.
In the instant case, Ajay wanted to contribute only 25% to the loss i.e. in the ratio of capital contribution while Amit requested for equal share in loss.
On the basis of above provisions and facts of the problem given, Ajay must share the loss equally as there was no agreement between partners regarding sharing of profit. Ratio of capital contribution is not related with ratio of sharing profit.

Q-29 Rahul and Kapil are partners in the firm M/s Saxena Marble House. Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account. Rahul did not consent to Kapil before acquiring of shares. Referring to the provisions of the Indian Partnership Act 1932:

a. Whether the shares purchased by Rahul constitute the property of firm?
b. What would be your answer if Rahul debits himself in the accounts books of firm and became a debtor to the firm? **(MTP May 25 Series 1)**

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

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

Further, if the contrary intension does not appear, the property acquired with the money of the firm is deemed to have been acquired for the firm.

In the instant case, Rahul and Kapil are partners in the firm M/s Saxena Marble House. Without the consent of Kapil, Rahul purchased 100 shares of a reputed company in his name, but he made the payment from firm's account.
The answers are:

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

Q-30 In accordance with provisions of the Indian Partnership Act, 1932, explain the following:
(i) The rights of an outgoing partner to carry on competing business.
(ii) The rights of a partner to be indemnified by the firm and the liability of a partner to indemnify the firm. (6 Marks) **(PYQ May 25)**

Ans. **(i) Rights of outgoing partner to carry on competing Business (Section 36 of the Indian Partnership Act, 1932)**
An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-
(a) use the firm name,
(b) represent himself as carrying on the business of the firm or
(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade- A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

(ii) Right of the partners to be indemnified by the firm [Section 13(e)]: Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

Liability of partner to indemnify the firm [Section 13(f)]: A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

Q-31 ABC & Co. is a renowned partnership firm doing business in textile industry from last twenty years. But due to technical up-gradation, firm incurred heavy debts of ` 50 lakhs. To maintain the integrity of the firm they introduced Mr. D, as a new partner. Before admission of D, other partners A, B, and C decided on their own and made an agreement with the creditors that the new partner will be liable for existing debt through novation. When D joins, he came to know about the debt of ` 50 lakhs. With reference to the provisions of the Indian Partnership Act, 1932, give your opinion:
i. Whether D would be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors?
ii. Whether your answer will be different if D was minor at the time of admission?
iii. Whether D would be liable to pay the debt upon becoming major? **(7 Marks) (PYQ May 25)**

Ans. **(i) Liability of D:** As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

(ii) If D was minor at the time of admission: As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
Minor has no personal liability for the debts of the firm incurred during his minority.
Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
Hence, D would not be liable in this case also.

(iii) Liability of D upon becoming major: A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
Moreover, a mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.
Hence, D would not be liable to pay the existing debt upon becoming major.

Q-32 "The partner indeed virtually embraces the character of both a principal and an agent. The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of Partnership." Explain with reference to provisions of the Indian Partnership Act, 1932. **(7 Marks) (PYQ May 25)**

Ans. **The partner indeed virtually embraces the character of both a principal and an agent.**
As per Section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purpose of the business of the firm. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.
The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.
The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of partnership.
Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an

authority of a partner to bind the firm is called his implied authority. It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

Q-33 X, Y and Z are partners in a firm named M/s XYZ & Co. Timber is used in the business of firm in the ordinary course of business. Y with intention to deceive W, a timber dealer, purchased timber on behalf of M/s XYZ & Co. Y uses the timber for construction of his own building. W has no idea that Y purchased the timber for his own use and claims the payment from M/s XYZ & Co. M/s XYZ & Co. refuses the payment as the timber was never received by it. State:

i. Whether firm is liable to pay the price of Timber?
ii. Whether the answer be different in case part of timber so purchased was delivered to firm and rest was used by Y for his personal use which was not in the knowledge of firm and W. **(7 Marks) (MTP Sept 25 Series 2)**

Ans. Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership. You must remember that an implied authority of a partner may differ in different kinds of business.

In the instant case, X, Y and Z are partners in a firm named M/s XYZ & Co. Y purchased timber from W in the name of firm but uses the timber for construction of his own building

of which W was unaware. When W claims the payment from M/s XYZ & Co. it refuses the payment.
Therefore, the answers are

a. as timber is of the ordinary use of business of firm, firm has to pay the price of timber to W.
b. The answer will be same part of timber so purchased was delivered to firm and rest was used by Y for his personal use which was not in the knowledge of firm and W.

Q-34 M/s M&M Associates was registered in 1985 by its three partners namely Mr. X, Mr. Y and Mr. Z as the partnership at will. On 5th January 2022, Mr. X, being a very senior partner of age 75 years decided to retire and transfer his shares in the firm to his grandson Mr. S, who was 17 years old at the time of the transfer. Mr. Y and Mr. Z were not interested but when they came to know that Mr. S is a minor, they agreed to admit Mr. S as partner. On 5th October, 2023 at the time of inspection of books and accounts, Mr. S noticed that the books of accounts were displaying only a small amount as profit despite a huge turnover. When, he asked other partners about this fact, then Mr. Y told him that one of the major clients, Mr. T refused to pay huge amount of fees. Mr. S decided to sue Mr. T for recovery of fees and sent a notice for the same. Mr. T argued that Mr. S cannot sue him because he has not given notice of remaining a partner on attaining majority.
With reference to provisions of the Indian Partnership Act, 1932 decide:
(i) Whether Mr. X can retire and introduce Mr. S (minor) as a partner?
(ii) Whether Mr. S has right to inspect books of accounts?
(iii) Whether Mr. S has authority to sue Mr. T, on non-payment of fees? **(7 Marks PYQ Sep 25)**

Ans. (i) As per the provisions of Section 32 of the Indian Partnership Act, 1932, (the Act) a partner may retire:
(a) with the consent of all the other partners;
(b) in accordance with an express agreement by the partners; or
(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
However, a minor cannot be admitted as a partner in a firm. A minor can only be admitted to the benefits of partnership with the consent of all partners.
As the partnership is at will, Mr. X can retire from the firm by giving notice in writing to all the other partners of his intention to retire and Mr. S, being a minor, can only be admitted to the benefits of partnership under Section 30 of the Act with the consent of all the existing partners.

(ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever is later, the minor partner has to decide whether he shall remain as a partner or leave the firm.
If he has elected not to become a partner, he may give a public notice in this regard and failure to do so, he shall become a partner in the firm after the expiry of the said 6 months.
As Mr. S failed to give the public notice whether he elected to become or not to become a partner of the firm, after expiry of 6 months from obtaining the majority, he will become the partner of the firm.

As per Section 12(d) of the Indian Partnership Act, 1932, every partner has the right to access and to inspect and to copy any of the books of the firm.
Therefore, Mr. S, in the given case, in the capacity of the being a partner by 5th of October, 2023, have right to inspect the books of accounts. The right, must, however, be exercise Bonafide.

(iii) According to Section 69 of the Act, the firm or any other person on its behalf cannot bring an action against a third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.
In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

(iii) ALTERNATE ANSWER:
Within 6 months of attaining majority or on obtaining knowledge that a minor partner had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.
Where he has elected not to become partner, he may give public notice that he has elected not to become partner, and such notice shall determine his position with regard to the firm.
If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
As Mr. S became major on 5th January 2023 and after six months i.e. 5th July 2023, he shall become a partner in the firm as he has not given notice of not becoming a partner.
Therefore, Mr. S has authority to sue Mr. T on non-payment of fee as no notice is required for remaining as a partner on attaining majority.

Q-35 (i) M/s SR Enterprises is a well-known trading firm. Mr. AM, a former partner of the firm, had retired in 2022 but never made any public announcement about his retirement. In 2024, Mr. R, a supplier, entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm. He relied on Mr. AM's past association with the firm and extended a credit line to the firm. When M/s SR Enterprises defaulted on payment, Mr. R, demanded that Mr. AM also be held liable for the dues. Mr. AM refused, stating that he was no longer a partner in the firm and had no involvement in the firm's affairs for long time. Examine with reference to the provisions of the Indian Partnership Act, 1932 whether Mr. AM can be held liable for the firm's above debt. **(3 Marks)**

(ii) M/s LMP & Associates, a partnership firm engaged in carpet manufacturing and exporting, was initially managed by senior partners L, M, and P. On 25th August, 2022, the firm admitted Mr. G, an expert in Mr. G was accused of unauthorized activities and subsequently expelled from the partnership with the unanimous approval of the remaining partners.
With reference to the provisions of the Indian Partnership Act, 1932, answer each of the following:
(1) Examine whether action by the partners was justified or not?
(2) What are the factors which should be kept in mind prior to expelling a partner from the firm by other partners? **(4 Marks)** **(7 Marks PYQ Sep 2025)**

Ans. **(i) Retirement of a Partner (Section 32 of the Indian Partnership Act, 1932):** A partner may retire:
(a) with the consent of all the other partners;
(b) in accordance with an express agreement by the partners; or
(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.
However, a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
In the instant case, Mr. AM can be held liable for the firm's debt as no public notice was given of his retirement and Mr. R entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm.

(i) ALTERNATE ANSWER:
Partner by Holding Out (Section 28):
Partnership by holding out is also known as partnership by estoppel. When a person represent himself, or knowingly permits himself, to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

The Rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

In the instant case, Mr. AM, despite retiring, did not publicly notify his disassociation from the firm. Since, Mr. R, the supplier, believed in good faith that Mr. AM was still a partner and extended credit based on this assumption, Mr. AM can be held liable as a "Partner by holding out".

(ii) (1) Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932): A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.
The test of good faith as required under Section 33(1) includes three things:
- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.
Action by the partners of M/s LMP & Associates, a partnership firm to expel Mr. G from the partnership was justified as he was expelled by unanimous approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. G. Provided, a proper notice and opportunity of being heard has been given to Mr. G.

(2) Factors to be kept in mind before expelling a Partner

The following are the factors to be kept in mind prior to the expelling of a partner from the firm by other partners:
(a) the power of expulsion must have existed in a contract between the partners;
(b) the power has been exercised by a majority of the partners; and
(c) it has been exercised in good faith.

UNIT – 3: REGISTRATION AND DISSOLUTION OF A FIRM

Q-1 What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? **(Module Q)**

Ans. **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.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
(2) Each person signing the statement shall also verify it in the manner prescribed.
(3) 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.

Q-2 When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain. **(Module Q) (RTP Sept 24) (MTP Sept 24 Series 2)**

Ans. Dissolution of Firm: The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes in capacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

a. as a result of any agreement between all the partners (i.e., dissolution by agreement);
b. by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
c. by the business of the firm becoming unlawful (i.e., compulsory dissolution);

d. subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.

e. by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

f. by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) wilful or persistent breach of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

Q-3 "Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms In India? **(Module Q) (MTP Jan 25 Series 1) (MTP May 25 Series 1)**

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

Following are consequences of Non-registration of Partnership Firms in India:
The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

(i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set- off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Q-4 State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932. **(7 Marks PYQ Sept 24) (MTP June 24 Series 2) (MTP Jan 25 Series 2) (MTP Sept 25 Series 1)**

Ans. **Dissolution by the court (Section 44 of the Indian Partnership Act, 1932):**
Court may, at the suit of the partner, dissolve a firm on any of the following ground:

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

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

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

d. Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
   - Embezzlement,
   - Keeping erroneous accounts
   - Holding more cash than allowed
   - Refusal to show accounts despite repeated request etc.

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

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

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

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

Q-5 The Indian Partnership Act does not make the registration of firms compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Still, there are come cases where non-registration of firm does not affect

certain rights. Explain with reference to the provisions of the Indian Partnership Act, 1932. **(7 Marks PYQ June 24)**

Ans. The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

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

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

Q-6 P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are reluctant to continue operating the business? **(4 Marks PYQ June 24) (RTP Jan 25) (RTP Sept 25) (MTP Jan 25 Series 2)**

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

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

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

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

Options available to Q and R

- Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.
- Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.

Q-7 "Dissolution of partnership doesn't mean dissolution of firm". Do you agree with this statement? State any three situations where court can dissolve the partnership firm. **(7 Marks PYQ June 24)**

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

Thus, the dissolution of firm means the discontinuation of the legal relation, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, the relationship between such a partner and other is dissolved, but the rest may decide to continue.

In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.
Important note: Different mode of presentation to an answer
Dissolution of partnership doesn't mean dissolution of firm. This statement can be proved with the help of some points of distinction between both of them, which are as follows:
Dissolution of Firm Vs. Dissolution of Partnership

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 of the firm.

Dissolution By the Court (Section 44 of the Indian Partnership Act, 1932):
Court may, at the suit of the partner, dissolve a firm on any of the following grounds:

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

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

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

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

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

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

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

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

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

Q-8 State the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the Indian Partnership Act, 1932? **(4 Marks PYQ Dec 23) (MTP Sept 24 Series 1) (MTP May 25 Series 2)**

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

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

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

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

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

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

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

Q-9 Explain about the registration procedure of a partnership firm as prescribed under the Indian Partnership Act, 1932. **(6 Marks PYQ June 23) (RTP May 2025)**

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

(a) The firm's name

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

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

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

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

(f) the duration of the firm.

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

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

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

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

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

The Firm when registered shall use the brackets and word (Registered) immediately after its name.

Q-10 "Indian Partnership Act does not make the registration of firm's compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India. Also, explain the rights unaffected due to non-registration of firms. **(6 Marks PYQ Nov22)**

Ans. It is true to say that Indian Partnership Act, 1932 does not make the registration of firms

compulsory nor does it impose any penalty for non-registration.

Following are the consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69 of the Indian Partnership Act, 1932, non-registration of partnership gives rise to a number of disabilities. These disabilities briefly are as follows:

(i) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(ii) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than `100 or pursue other proceedings to enforce the rights arising from any contract.

(iii) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(iv) Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Following are the Rights unaffected due to non-registration of firms: Non-registration of a firm does not, however effect the following rights:

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

Q-11 "Dissolution of a partnership firm may occur by mutual agreement with the consent of the majority of partners, while compulsory dissolution requires an order from the court." Discuss this statement with reference to the relevant provisions of the Indian Partnership Act, 1932. (**3 Marks PYQ Jan 2025**)

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

Hence, the statement 'dissolution of a firm by the consent of the majority of the partners is not correct unless otherwise provided in a contract between them.

Compulsory dissolution (Section 41):
A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. Hence, the statement 'compulsory dissolution requires an order from the court' is not correct.

Q-12 Discuss the provisions of the Indian Partnership Act, 1932 regarding the payment of firm debts and separate debts of partners. How are the firm's property and the partners' separate property applied in settling such debts? **(MTP May 25 Series 2)**

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

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

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

Q-13 On the dissolution of a firm, what are the rights and obligations of partners under the Indian Partnership Act, 1932 with respect to:

(i) The right to have the business wound up and surplus distributed,

(ii) The continuing authority of partners for the purpose of winding up and completing unfinished transactions, and

(iii) The application of firm debts and separate debts of partners. **(7 Marks) (MTP Sept 25 Series 2)**

Ans. **(i) Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932):** On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

(ii) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:
Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

(iii) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:
(i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;

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

Q-14 M, N, and O were partners in a firm engaged in the transport business. Over time, N became mentally unsound and was incapable of managing the firm's affairs. O alleged that M was continuously guilty of misconduct and was misappropriating the firm's funds. Due to repeated disputes and loss of trust, O filed a petition in Court seeking dissolution of the firm. After the court ordered dissolution, M claimed that he still had the right to use the firm's trucks and vehicles for his personal business. Explain whether contention of M is correct. **(RTP Jan 26)**

Ans. According to Section 44 of the Indian Partnership Act, 1932, the Court may dissolve a firm on several grounds, including when a partner becomes of unsound mind, when a partner is guilty of misconduct affecting business, when partners commit persistent breaches of the partnership agreement, or when it becomes just and equitable to dissolve the firm.

Further, Section 46 provides that on dissolution of a firm, every partner or his representative is entitled to have the firm's property applied in payment of debts and liabilities of the firm, and the surplus distributed among partners according to their rights. No partner can claim exclusive rights over the property of the firm after dissolution

Here, N became mentally unsound and incapable of attending to partnership matters. O alleged that M was guilty of misconduct and misappropriation of funds. Due to loss of confidence and ongoing disputes, O approached the court for dissolution of the firm. The court ordered the dissolution. Subsequently, M claimed personal rights over the firm's assets, particularly its vehicles, for his individual use.

In the instant case, the dissolution ordered by the court was valid under Section 44, as one partner was of unsound mind and another was guilty of misconduct. After dissolution, under Section 46, the firm's assets must be used for clearing liabilities and then distributed among partners according to their share. M cannot claim exclusive rights over trucks and vehicles for personal business. His claim is unjustified, and the property must be applied for settlement of accounts of the dissolved firm.

Q-15 A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.

(i) A filed a suit against B who had stolen the goods of the firm.

(ii) A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.

(iii) M filed a suit against the firm M/s ABC & Associates for the recovery of ` 10,000/- dues from the firm. M also owed ` 4,000/-to the firm. The firm claimed a set off of ` 4,000/-. **(6 Marks PYQ Sep 25)**

Ans. **(i) A filed a suit against B who had stolen the goods of the firm:**
The said suit by A is Maintainable.
Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars

civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.
Hence, the suit filed against B for the theft of the goods of the firm is maintainable.

(ii) A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution
The said suit by A is Maintainable.
Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim is valid as the shares are the assets of the dissolved firm and A can claim it even if the firm is unregistered.

(iii) M filed a suit against the firm for recovery of `10,000/- dues. M also owed `4,000/-. The firm claimed a set-off.
The said suit by M is Maintainable
Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.
Here, M filed a suit against the firm for the recovery of `10,000 dues from the firm. M also owed `4,000/- to the firm.
The firm cannot set-off the claim of `4,000/- as it is more than `100/. – Nevertheless, M is entitled for recovery of ` 10,000 from firm.

LESSON-5

Q-1 Examine the concept of LLP. **(Module Q)**

Ans. Meaning – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of "limited liability partnership"

- The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- 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.
- Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Q-2 Enumerate the various characteristics of the LLP. **(Module Q)**

Ans. LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Minimum and maximum number of partners
- Business for profit only

- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign

Q-3 What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? **(Module Q) (MTP Sept 24 Series 1)**

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

According to section 7 of the LLP Act, 2008:

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

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

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

Q-4 What are the effects of registration of LLP? **(Module Q)**

Ans. **Effect of registration (Section 14):**
On registration, a LLP shall, by its name, be capable of—

a) suing and being sued;
b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
c) having a common seal, if it decides to have one; and
d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Q-5 "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. **(Module Q) (MTP June 24 Series 1) (MTP Sept 24 Series 2)**

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

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

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form

enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Q-6 Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008. **(Module Q)**

Ans. Essential elements to incorporate Limited Liability Partnership (LLP) - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

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

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

iii. To have registered office in India to which all communications will be made and received;

iv. To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.

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

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

vii. LLP Name.

Q-7 Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

i. Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. **(4 Marks PYQ Sept 24) (RTP May 25) (RTP Jan 26) (MTP Jan 25 Series 1) (MTP Sept 25 Series 1)**

ii. What do you mean by a Small Limited Liability Partnership? **(2 Marks PYQ Sept 24) (RTP May 25) (MTP Jan 25 Series 1)**

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

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

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

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

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

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

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

(3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.
Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

ii. Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]: It means a limited liability partnership—
- 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
- the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Q-8 A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.
(i) Body Corporate
(ii) Mutual Agency
(iii) Foreign LLPs
(iv) Artificial legal person **(6 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 2)**

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

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

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

partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

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

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

Q-9 "A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership".
In line of above statement clearly elaborate the difference between LLP and LLC. **(5 Marks PYQ Nov22) (MTP June 24 Series 2)**

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

Basis	**LLP**	**Limited Liability Company (LLC)**
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/ Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013) read with its Memorandum of Association and Articles of Association.
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners of the LLP can be individuals/or body corporate through the nominees	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members.

		Members can be organizations, trusts, another business form or individuals.
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the LLP managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders
Minimum number of directors/designated partners	2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

Q-10 State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. **(RTP Sept 24)**

Ans. Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

i. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

ii. A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

iii. A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

iv. If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ` 500 for each day during which the default continues, subject to a maximum of ` 50,000 for the LLP and its every partner.

Q-11 A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities. **(RTP June 24)**

Ans. **Right Distinguishment Between LLP and Partnership Firm**

Points to distinguish
Regulating Act
Body corporate
Separate legal entity
Creation
Registration

Perpetual succession
Name
Liability
Mutual agency
Designated partners
Common seal
Legal compliances
Annual filing of documents
Foreign partnership
Minor as partner

Q-12 Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? **(MTP June 24 Series 3)**

Ans. Partners (Section 5 of Limited Liability Partnership Act, 2008): Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
b) he is an undischarged insolvent; or
c) he has applied to be adjudicated as an insolvent and his application is pending.

Q-13 What are the effects of registration of Limited Liability Partnership? **(MTP June 24 Series 3)**

Ans. Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):
On registration, a LLP shall, by its name, be capable of—

a) suing and being sued;
b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
c) having a common seal, if it decides to have one; and
d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Q-14 Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of the Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them. **(6 Marks PYQ Jan 25)**

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

(1) For a LLP to be incorporated:

a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

c) Statement to be filed:
- there shall be filed along with the incorporation document, a statement in the prescribed form,
- made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the LLP;

(c) state the proposed business of the LLP;

(d) state the address of the registered office of the LLP;

(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

(g) contain such other information concerning the proposed LLP as may be prescribed.

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

a) knows to be false; or

b) does not believe to be true, shall be punishable

with imprisonment for a term which may extend to 2 years and
with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.

Incorporation by registration (Section 12- Sufficient evidence): As per section 12, the Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of the sub-section has been complied with.

In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

Q-15 "Both Limited Liability Partnerships and Limited Liability Companies offer limited liability protection, yet they differ significantly in structure and governance. Discuss these differences in detail." **(MTP May 25 Series 1)**

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

Basis	**LLP**	**Limited Liability Company (LLC)**
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/ Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013) read with its Memorandum of Association and Articles of Association.
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/ partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners of the LLP can be individuals/or body corporate through the nominees	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the LLP managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders
Minimum number of directors/designated partners	2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

Q-16 Explain the advantages of the LLP form of business. How does its legal structure make it a flexible and preferable business model for entrepreneurs? Also, discuss the legal capacities an LLP acquires upon registration. **(MTP May 25 Series 2)**

Ans. **Advantages of LLP form:**
LLP form is a form of business model which:
a. is organized and operates on the basis of an agreement

b. provides flexibility without imposing detailed legal and procedural requirements.
c. Easy to form
d. All partners enjoy limited liability
e. Flexible capital structure
f. Easy to dissolve

Effect of registration:
On registration, a LLP shall, by its name, be capable of
a. Suing and being sued;
b. acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
c. having a common seal, if it decides to have one; and
d. doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Q-17 i. Limited Liability Partnership (LLP) gives the benefits of Limited Liability of a company on one hand and the flexibility of Partnership on the other. Discuss according to provisions of the Limited Liability Partnership Act, 2008. **(3 Marks)**

ii. Raju and his friend Anil have approached you to help them to form a LLP. The object of the proposed LLP is to run a charitable school which provides free education to the poor children. What would be your suggestion in accordance of provisions of the Limited Liability Partnership Act, 2008? **(3 Marks) (PYQ May 25)**

Ans. i. LLP gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other:

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

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

ii. 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.

In the instant case, Raju and Anil cannot form LLP to run a charitable school which provides free education to the poor children.

In view of above it is suggested to them that they can form a section 8 company for this purpose.

Q-18 Explain the legal provisions regarding the eligibility of persons to become partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008. What are the consequences if LLP carries on business with less than the minimum number of partners as prescribed? **(RTP Sept 25)**

Ans. **Partners (Section 5 of the LLP Act, 2008):**
Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

a. he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
b. he is an undischarged insolvent; or
c. he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6):

i. Every LLP shall have at least two partners.
ii. If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Q-19 Discuss the provisions of the LLP Act, 2008 relating to partners in a Limited Liability Partnership. In your answer, explain:

a) The eligibility and disqualifications of a person to become a partner,
b) The minimum number of partners required and the consequences of reduction below the statutory limit, and
c) The concept of designated partners, including the requirement of having a resident designated partner. **(6 Marks) (MTP Sept 25 Series 2)**

Ans. **Partners (Section 5 of the LLP Act, 2008):** Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
(b) he is an undischarged insolvent; or
(c) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6):
(i) Every LLP shall have at least two partners.
(ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Designated partners (Section 7):
(i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
(ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

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

Q-20 Five close friends decided to form a Limited Liability Partnership firm 'EDUDED LLP' for educating poor children as non-profit organization. They were Mr. A (Non-resident), Mr. B (Non-Resident), Ms. C (resident), Ms. D (resident) and Ms. E (resident). It was decided that Mr. A and Mr. B will be appointed as designated partners.

With reference to provisions of the Limited Liability Partnership Act, 2008, answer each of the following:
(i) Whether EDUDED LLP can be formed for above purpose?
(ii) Whether Mr. A and Mr. B can be appointed as designated partners in EDUDED LLP? **(6 Marks PYQ Sep 2025)**

Ans. (i) According to Section 11 of the Limited Liability Partnership Act, 2008, the essential requirement of forming LLP is carrying on a lawful business with a view to earn profit. EDUDED LLP cannot be formed for educating poor children as a non-profit organization.

In view of the above, a LLP cannot be formed for charitable or noneconomic purpose.

(ii) Designated Partners (Section 7 of the Limited Liability Partnership Act, 2008): Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a Resident in India.

For the purpose of this section, the term Resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

As EDUDED LLP cannot be formed because its purpose is for non-profit organization, the question of appointing Mr. A and Mr. B as designated partners does not arise.

Note: However, if the EDUDED LLP can be formed, Mr. A and Mr. B cannot be appointed as designated partners in EDUDED LLP as both are Non-Resident and the condition that at least one designated partner must be a resident in India is not fulfilled. Therefore, one designated partner must be either Ms. C or Ms. D or Ms. E as all three of them are resident.

LESSON-6

Q-1 What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital. **(Module Q)**

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

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

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited. However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Q-2 Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt? **(Module Q) (RTP Jan 26)**

Ans. Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

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

The Central Government has the power to issue license for registering a section 8 company.

i. Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.

ii. The registrar shall on application register such person or association of persons as a company under this section.

iii. On registration the company shall enjoy same privileges and obligations as of a limited company.

Q-3 Briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company? **(Module Q)**

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

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [Ashbury Railway Company Ltd. vs. Riche]. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

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

Ans. Doctrine of Indoor Management (the Companies Act, 2013): According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures

and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

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

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

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

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

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

   The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

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

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

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

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

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

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

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

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

Q-6 Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short- and long-term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ` 25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have

been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? **(Module Q) (MTP May 25 Series 1)**

Ans. **Doctrine of Indoor Management**

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

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

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

Q-7 Examine the following whether they are correct or incorrect along with reasons:

a) A company being an artificial person cannot own property and cannot sue or be sued.
b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members. **(Module Q)**

Ans.

a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or

more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

Q-8 Mike Limited is incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013? **(Module Q) (MTP Sept 24 Series 2)**

Ans. Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

i. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii. conducts any business activity in India in any other manner.

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

Q-9 ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ` 100 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013? **(Module Q) (MTP Sept 24 Series 1)**

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

The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ` 15 crore, which is less than requisite control of 20% of total share capital (i.e. ` 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

Q-10 Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short- listed friends as a nominee with effect from 1st January, 2024.

1. Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.
2. Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.

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

changing the name of the nominee as per the provisions of the Companies Act, 2013. **(4 Marks PYQ Sept 24)**

Ans. **As per Rule 3 of the Companies (Incorporation) Rules, 2014:**
Only a natural person who is an Indian citizen whether resident in India or otherwise

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

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

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

In the instant case,

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

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

Q-11 XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ` 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company? **(3 Marks PYQ Sept 24) (RTP May 25) (MTP Jan 25 Series 2) (MTP May25 Series 1)**

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

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

Q-12 Referring to the provisions of the Companies Act, 2013, answer the following:

i. "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances. **(5 Marks PYQ Sept 24)**

ii. What is the effect of Memorandum and Articles when registered? **(2 Marks PYQ Sept 24)**

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

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

1. To determine the character of the company i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
2. To protect revenue/tax: In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.
   i. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.
   ii. Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.
3. To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).
4. Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
5. Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

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

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

Q-13 JV Limited borrowed a secured loan of ` 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ` 1 crore. The bank released the loan amount in two instalments of ` 1 crore and ` 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ` 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of ` 3 crore for repayment of its lawful debts. The utilisation of the remaining ` 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan. **(4 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

Ans. Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers." It is a fundamental rule of Company Law that any act done or a contract made by

the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

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

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

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.
Ultimately, the company has no remedy available to recover the balance amount of loan of ` 1 crore as the spending thereof is not traceable.

Q-14 After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.
Would your answer be different, if the company had a company secretary? **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.
If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

Q-15 A company, ABC limited as on 31.03.2023 had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ` 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.
Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited.
State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013. **(7 Marks PYQ June 24) (MTP Jan 25 Series 1)**

Ans. As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

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

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

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post-issue, the total paid-up capital of ABC Limited is ` 2 lakhs (20,000 equity shares of `10 each).

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

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

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

The expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.
In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company.

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

Q-16 Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company? **(7 Marks PYQ June 24) (MTP Jan 25 Series 1)**

Ans. Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.
Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.
According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) – salient features

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

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

Q-17 i. XYZ is a company incorporated under the Companies Act, 2013.
The paid up share capital of the company is held by others as on 31.03.2024 in as under:

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

As per above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013. **(4 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 2)**

ii. M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died? **(3 Marks PYQ June 24) (MTP Jan 25 Series 2)**

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

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

And includes a company which is a subsidiary company of such a Government company.
In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%
The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%.
Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013.

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

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

Q-18 The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid-up capital of Y Limited is ` 9.5 crore (95 lakh shares of ` 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ` 5crore in the form of 5 lakh shares of ` 100 each. Z Private Limited claimed the status of a subsidiary company of ` 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal adviser, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013? **(4 Marks PYQ Dec 23) (MTP Sept 24 Series 2)**

Ans. According to Section 2(45) of the Companies Act, 2013, Government Company means any

company in which not less than 51% of the paid-up share capital is held by-

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

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

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

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

Q-19 Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital. **(6 Marks PYQ Dec 23)(RTP May 25)**

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

1. "Equity share capital" with reference to any company limited by shares, means all share capital which is not preference share capital;

Equity share capital— can be

i. with voting rights; or
ii. with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;

2. "Preference share capital" with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a

preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, despite that it is entitled to either or both of the following rights, namely:-

a) that in respect of dividends, in addition to the preferential rights to the amounts specified as above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Q-20 ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crores and convertible preference shares worth ` 10 crores during the financial year 2022-23. After that the total share capital of the company is ` 100 crores.
Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company. **(4 Marks PYQ June 23)**

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

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

The term "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crore and convertible preference shares worth `10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ` 100 crore.

Since XYZ Limited is holding only 15% significant influence (` 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.

Important Note:
It can be assumed that the convertible preference shareholders are having voting rights and due to this, XYZ Limited is holding overall 25% paid up share capital in ABC Limited (with voting rights). Hence, XYZ limited is having significant control over ABC Limited and therefore XYZ is an Associate company of ABC Limited.

Q-21 Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013. **(6 Marks PYQ June 23)**

Ans. Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified

separately from the members of the company. Due to this, members of a company are shielded from liability connected to the company's actions.

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

1. To determine the character of the company i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
2. To protect revenue/tax: In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate identity.
3. To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.
4. Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
5. Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Q-22 ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ` 35 lakhs and turnover of ` 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company. **(3 Marks PYQ June 23)**

Ans. Small Company: Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—

i. paid-up share capital of which does not exceed ` 4 crore or such higher amount as may be prescribed which shall not be more than ` 10 crore; and

ii. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ` 40 Crore or such higher amount as may be prescribed which shall not be more than ` 100 crore:

Exceptions: This clause shall not apply to:

a) a holding company or a subsidiary company;
b) a company registered under section 8; or
c) a company or body corporate governed by any special Act.

In the instant case, since the paid-up capital of ABC Private Limited is ` 35 Lakhs and turnover is ` 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

Q-23 Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ` 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ` 1,50,000/- Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment? **(4 Marks PYQ Nov22) (MTP June 24 Series 3)**

Ans. **(i) Fate of the suit and the liability of Mr. R towards the company:**

Doctrine of the Indoor Management

According to the Doctrine of the Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-the Royal British Bank vs. Turquand. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ` 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

(ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management, in no way, rewards those who behave negligently. It is the duty of the outsider to make necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

Q-24 i. Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ` 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013? **(4 Marks PYQ Nov22)**

ii. Explain listed company and unlisted company as per the provisions of the Companies Act, 2013. **(2 Marks PYQ Nov22) (MTP June 24 Series 3)**

Ans. i. Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

ii. 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.

Q-25 Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company. **(3 Marks PYQ Nov22) (RTP June 24) (MTP Jan 25 Series 2)**

Ans. Mike LLC is incorporated in Singapore and having a place of business in Pune, India. Since, Mike LLC is incorporated outside India and having a Place of business in India, hence it is a foreign Company.

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

i. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii. conducts any business activity in India in any other manner.

Q-26 i. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ` 30 Lakhs (3 Lakhs equity shares of ` 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited.

ii. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? **(RTP Jan 25)**

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

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

For the purposes of this section —

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

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

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

ii. In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

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

Q-27 Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ` 10 crore in the form of 10,00,000 shares of ` 100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is Government Company under the provisions of Companies Act, 2013? **(RTP Jan 25)**

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

i. the Central Government, or

ii. by any State Government or Governments, or

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

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

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further

as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

Q-28 A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the artwork of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April 2021 onwards.
However, on 30th September 2023, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act, 2013.
Discuss what powers can be exercised by the Central Government against ABC club, in such a case? **(RTP Sept 24)**

Ans. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. ABC Club was a Section 8 company, and it was observed on 30th September 2023 that it had started violating the objects of its objective clause.
Hence in such a situation the following powers can be exercised by the Central Government:

i. The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

ii. Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

iii. Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Q-29 HP Polytech Limited has a paid-up share capital divided into 6,00,000 equity shares of ` 100 each. 2,00,000 equity shares of the company are held by the Central Government and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference

to relevant provisions of the Companies Act, 2013, whether HP Polytech Limited can be treated as a Government Company. **(RTP Sept 24)**

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

i. the Central Government, or

ii. by any State Government or Governments, or

iii. partly by the Central Government and partly by one or more State Governments,

and the section includes a company which is a subsidiary company of such a Government company.

In the instant case, the paid-up share capital of HP Polytech Limited is 6,00,000 equity shares of ` 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.
Hence, HP Polytech Limited is a government company.

Q-30 No limit Private Company is incorporated as unlimited company having share capital of ` 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent? **(RTP Sept 24) (MTP June 24 Series 2) (MTP Sept 25 Series 2)**

Ans. Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of the above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even though the company is an unlimited company. Mr. Innocent is liable for upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

Q-31 Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv's business and continued it. Sunmoon Timber Private Limited filed a suit

against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded? **(RTP June 24)**

Ans. It was decided by the court in the case of Gilford Motor Co. Vs. Horne, if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.
On considering the decision taken in Gilford Motor Co. Vs. Horne and facts of the problem given, it is very much clear that Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and the separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

Q-32 AK Private Limited has borrowed ` 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ` 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited. **(RTP June 24)**

Ans. This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

(i) Whether AK Private Limited is liable to pay the debt?
As per the facts given, AK Private Limited borrowed ` 36 crore from BK Finance Limited which is beyond its borrowing power of ` 30 crore.
Hence, contract for borrowing of ` 36 crore, being ultra vires the Memorandum of Association and thereby is void. AK Private Limited is not, therefore, liable to pay the debt.

(ii) Remedy available to BK Finance Limited:
In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

Q-33 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? **(MTP Jan 25 Series 2) (MTP June 24 Series 2)**

Ans. One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.
Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e articles.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise
  - shall be eligible to incorporate a OPC;
  - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

Q-34 Mr. Mohan had purchased some goods from Sunflower Limited on credit. A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the Accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Ramesh is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. Mohan is free from his liability. **(MTP Sept 24 Series 2)**

Ans. Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive Notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the Articles or Memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company

through its directors or other persons.

They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the Articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and he (Mr. Ramesh) gave to receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company.

Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company.

Q-35 Mr. Rajeev, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Mr. Rajeev as a pretended loan. This way, Mr. Rajeev divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded. **(MTP Sept 24 Series 2)**

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

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in Re Sir Dinshaw Maneckjee Petit and Juggilal vs. Commissioner of Income Tax.

Q-36 Mr. Sooraj sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After

one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sooraj filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim? **(MTP Sept 24 Series 1)**

Ans. According to the decision taken in the case of Salomon Vs. Salomon & Co. Ltd., a company has a separate legal entity. A company is different from its members. Further, according to the decision taken in the case of Macaura Vs. Northern Assurance Co. Ltd., a member or creditor does not have any insurable interest in the property of the company. Members or creditors of the company cannot claim ownership in the property of company.

On the basis of the above provisions and facts, it can be said that Mr. Sooraj and CPL Private Limited are separate entities. Mr. Sooraj cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sooraj for the claim for the loss of stock by fire.

Q-37 Alfa school is a section 8 company which started imparting education on 1.4.2015, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? **(MTP Sept 24 Series 1)**

Ans. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

i. The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

ii. Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

iii. Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this

Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Q-38 Powertech Limited was registered as a public company. There are 230 members in the company as noted below:

a) Directors and their relatives 190
b) Employees 15
c) Ex-Employees (Shares were allotted when they were employees) 10
d) 5 couples holding shares jointly in the name of husband and wife (5*2) 10
e) Others 5

The Board of Directors of Powertech Limited proposes to convert it into a private company. Also advise whether a reduction in the number of members is necessary. **(MTP Sept 24 Series 1)**

Ans. According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.
It is further provided that -

A. persons who are in the employment of the company; and
B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

In the instant case, Powertech Limited may be converted into a private company only if the total members of the company are limited to 200.

Total Number of members
(i) Directors and their relatives 190
(ii) 5 Couples (5*1) 5
(iii) Others 5
Total 200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

Q-39 Popular Products Ltd. is company incorporated in India, having a total Share Capital of ` 20 Crores. The Share capital comprises of 20 Lakh equity shares of ` 100 each. Delight Products Ltd. And Happy Products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company, Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all the above three companies namely Delight Products Ltd.; Happy Products Ltd. and Cheerful Products Ltd. Can Jovial Ltd. be

termed as a subsidiary company of Popular Products Ltd. State the related provision in favour of your answer, if Jovial Ltd. controls the composition of directors of Popular Products Ltd. **(MTP Sept 24 Series 1)**

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

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

In the present case, the total share capital of Popular Products Ltd. is ` 20 crores comprised of 20 Lakh equity shares.
Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd., which amounts to less than one-half of its total voting power. Hence, Jovial Ltd. By virtue of shareholding is not a holding company of Popular Products Ltd.

Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company.

Q-40 Mr. Samyak was appointed as an employee of Moonlight Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from the company. He set up his own business under proprietorship and undercut Moonlight Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Nine Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Samyak were the sole shareholders and directors. They took over Samyak's business and continued it. Moonlight Timber Private Limited files a suit against Nine Stars Timbers Private Limited for violation of contract. Nine Stars Timbers Private Limited argued that the contract was entered into between Mr. Samyak and Moonlight Timber Private Limited and as the company has separate legal entity, Nine Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited will be disregarded? **(MTP June 24 Series 3)**

Ans. It was decided by the court in the case of Gilford Motor Co. Vs. Horne, that if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is a mere sham or cloak, the separate legal entity can be disregarded. On considering the decision taken in Gilford Motor Co. Vs. Horne and facts of the problem given, it is very much clear that Nine Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Samyak and Moonlight Timber Private Limited. Hence, Nine Stars Timbers Private Limited is just a sham or cloak and the separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited should be disregarded.

Q-41 Pacific Motors Limited is a government company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of ` 100 each. Pacific Motors Limited is holding five lacs five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is government company under the provisions of Companies Act, 2013? **(RTP Sept 25) (MTP June 24 Series 3)**

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

i. the Central Government, or

ii. by any State Government or Governments, or

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

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

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

Q-42 Explain the classification of the companies on the basis of control as per the Companies Act, 2013. **(MTP June 24 Series 3)**

Ans. **On the basis of control:**

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

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

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

i. controls the composition of the Board of Directors; or

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

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

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

Explanation. — For the purpose of this clause —

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

b) the expression "joint venture'' means a joint arrangement whereby the parties that have joint

Q-43 A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held ageneral meeting by giving only 14 days' notice. Is this valid? **(MTP June 24 Series 2) (MTP Sept 25 Series 2)**

Ans. A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.
Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.
Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

Q-44 MNP Private Ltd. is a company registered under the Companies Act, 2013 with Paid Up Share Capital of ` 5 crores and turnover of ` 35 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ` 45 crores?

Ans. Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:
(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than four crore rupees; and
(2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than forty crore rupees.
Nothing in this clause shall apply to—
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act.

(i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 5 crores and having turnover of ` 35 crore. Since only one criteria of turnover of ` 35 crores is met, but the paid up share capital exceeds ` 4 crores and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is ` 45 crore, then both the criteria are not fulfilled and MNP Ltd. cannot avail the status of small company in this case also.

Q-45 The paid-up capital of Darshan Photographs Private Limited is ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares (not carrying any voting rights) of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,
(a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?
(b) Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darsha Photographs Private Limited? **(MTP June 24 Series 1) (MTP Sept 25 Series 2)**

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

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

For the purposes of this section —

I. the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
II. the expression "company" includes any body corporate; It is to be noted that Preference share capital will also be considered if preference shareholders have same voting rights as equity shareholders.

In the instant case, Darshan Photographs Private Limited is having paid-up capital of ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

a) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one – half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, Darshan Photographs Private Limited cannot be considered as subsidiary company of Shadow Evening Private Limited as for being subsidiary company other company should control more than one – half of the total voting power.
b) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

Q-46 Explain the 'Doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company? **(MTP June 24 Series 1)**

Ans. Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels

beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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

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

Q-47 Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was ` 1.80 crore and paid up share capital was ` 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. **(RTP Sept 25) (MTP May 25 Series 2) (MTP June 24 Series 1)**

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

a. paid-up share capital of which does not exceed four crore rupees, and
b. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

A. a holding company or a subsidiary company;
B. a company registered under section 8; or
C. a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of ` 1.80 crore, and paid-up share capital was ` 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company'because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

Q-48 In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:
(A) Is Flower Fans Private Limited no longer in existence?
(B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? **(RTP Sept 25) (MTP May 25 Series 2) (MTP June 24 Series 1)**

Ans. (A) Perpetual Succession – A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence. The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(B) The statement given is incorrect. A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

Q-49 Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient. **(4 Marks PYQ Jan 25) (MTP May 25 Series 2)**

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

- Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
  - promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
  - Such company intends to apply its profit in
  - promoting its objects and
  - prohibiting the payment of any dividend to its members.
- The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to

- Converts its status and change its name
- Wind–up
- Amalgamate with another company having similar object.

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

In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation).

The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm.

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

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

Q-50 Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company? (**3 Marks PYQ Jan 25) (MTP May 25 Series 2) (MTP Sept 25 Series 1)**

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

- Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
- Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

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

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

Q-51 Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. (**7 Marks PYQ Jan 25)**

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

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

1. Contains regulations: The articles of a company shall contain the regulations for management of the company.
2. Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
3. Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
4. Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
5. Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
6. Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
7. Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.
8. Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

Q-52 The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:

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

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013.(**5 Marks PYQ Jan 25)**

Ans. Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013: No institution shall be so notified unless—

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

In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e. Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013.
By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

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

Q-53 Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013? (**2 Marks PYQ Jan 25)**

Ans. No, it is not mandatory to have common seal for the company.

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

Q-54 Ratanmul Milk India Limited is a public company and formed on 01.01.2023. On this date, Mr. Sharman was appointed as Legal Advisor of the company. It was mentioned in the Articles of Association of the company that Mr. Sharman will not be removed from the post of Legal Advisor till 31.03.2027. On 01.07.2024, a Special Resolution was passed for the alteration in Articles of Association and Mr. Sharman was removed from the company. Mr. Sharman filed the suit against Ratanmul Milk India Limited for removal as a Legal Advisor. Referring the provisions of the Companies Act, 2013, whether can company remove Mr. Sharman? **(RTP May 25)**

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

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

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

Q-55 Parasnath Infraheight Limited is a public company and having 215 members of which 20 members were employees in the company during the period 1st June, 2022 to 30th June, 2024. They were allotted shares in Parasnath Infraheight Limited on 1st April, 2018 which are held by them till today i.e. 31st August 2024. Now, the company wants to convert itself into a private company. State with reasons, whether Parasnath Infraheight Limited is required to reduce the number of members under the provisions of the Companies Act, 2013? **(MTP May 25 Series 1)**

Ans. According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,-

i. restricts the right to transfer its shares;

ii. except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

Provided further that—

A. persons who are in the employment of the company; and

B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

iii. prohibits any invitation to the public to subscribe for any securities of the company.

In the given problem, Parasnath Infraheight Limited is a public company and wants to convert itself into a private company. It is having 215 members out of which 20 members were employees during the period 1st June, 2022 to 30th June, 2024. These members were members in the company from 1st April, 2018 which are held by them till date i.e. 31st August, 2024.

Following the provisions of Section 2(68) of the Act, 20 members were employees of the company, but they were not employee at the time of getting membership and nor on

existing date i.e. 31st August, 2024. Hence, they will be considered as members for the purpose of the limit of 200 members. Therefore, the company is required to reduce the number of members before converting it into a private company.

Q-56 "What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013? **(MTP May 25 Series 1)**

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

i. the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

ii. a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

iii. a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-

- he is not convicted of any offence in connection with the promotion, formation or management of any company, or
- he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
- and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

iv. the address for correspondence till its registered office is established;

v. the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

vi. the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and

vii. the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Q-57 Explain the classification of capital under Company Law as per the Companies Act, 2013. Discuss the different types of capital and the statutory definitions associated with each. **(MTP May 25 Series 2)**

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

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

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

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

iii. Subscribed capital: Section 2(86) of the Companies Act, 2013 defines "subscribed capital" as such part of the capital which is for the time being subscribed by the members of a company.

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

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

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

Q-58 (i) State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:

1. STS Pvt. Ltd., having a turnover of ` 10 crores and the paid-up capital of ` 1 crore (1,00,000 equity shares of ` 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.
2. ZX Ltd., having a paid-up capital of 3 crores and turnover of 35 crores. **(4 Marks) (MTP Sept 25 Series 1)**

(ii) The paid-up equity share capital of ACD Ltd. is 80 crores & preference share capital of 20 crores. B Ltd. holds equity shares in ACD Ltd. worth 15 crores and preference shares worth 10 crores. Can B Ltd. be considered as an Associate Company of ACD Ltd.? **(3 Marks) (PYQ May 25)**

Ans. (i) According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—

a. paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
b. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act.

In the instant case,

1. STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ` 10 crores and ` 1 crore respectively), but since it is the subsidiary c.ompany of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ` 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.
2. ZX Ltd. cannot be considered as a small company since it is a public company.

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

The term "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.
In the given case, the paid up share capital of ACD Ltd. is ` 80 crores. B Ltd. holds equity share capital of ` 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore ACD Ltd. cannot be considered as an Associate Company of B Ltd.

Alternate conclusion

Since the question is asked with reference to B Ltd. who had stake of ` 15 crores in the ACD Ltd. to be considered as an associate company or not.
So, the conclusion may be alternatively as follows:
In the given case, the paid up share capital of ACD Ltd. is ` 80 crores. B Ltd. holds equity share capital of ` 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore, B Ltd. cannot be considered as an Associate Company.

Q-59 Doctrine of indoor management allows all those who deal with the company to assume that the officers of the company have observed the provisions of the articles. In light of the above statement, explain the doctrine of indoor management and its exceptions, if any, according to provisions of the Companies Act, 2013. **(7 Marks) (PYQ May 25)**

Ans. Doctrine of Indoor Management: According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. Thus, the doctrine of indoor management aims to protect outsiders against the company.

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

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

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

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

Q-60 (i) The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ` 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan? **(4 Marks)**

(ii) SNM Ltd. was registered in 2021 with a share capital of ` 50 Lakh divided into 5 lakhs equity share of ` 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM.

With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025. **(3 Marks) (PYQ May 25) (MTP Sept 25 Series 1)**

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

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.
The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.

Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.
Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.
b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

(ii) Formation of companies with charitable objects etc. (Section 8 company): Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- 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.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

Q-61 An employee, Mr. Karan, signed a contract with his employer company, ABC Limited, that he will not solicit the customers after leaving the employment from the company.
But after Mr. Karan left ABC Limited, he started up his own company, PQR Limited and started soliciting the customers of ABC Limited for his own business purposes.
ABC Limited filed a case against Mr. Karan for breach of employment contract and for soliciting their customers for own business. Mr. Karan contended that there is a corporate veil between him and his company and he should not be personally held liable for this.
In this context, the ABC Limited seeks your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company. **(RTP Sept 25)**

Ans. Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.
The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.
Thus, the shareholders are protected from the acts of the company.
However, under certain exceptional circumstances, the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:
(i) To determine the character of the company i.e. to find out whether co-enemy or friend.
(ii) To protect revenue/tax

(iii) To avoid a legal obligation
(iv) Formation of subsidiaries to act as agents
(v) Company formed for fraud/improper conduct or to defeat law

Based on the above provisions and leading case law of Gilford Motor Co. Vs Horne, the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the company only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

Q-62 Briefly explain the nature of shares under the Companies Act, 2013 with reference to legal position of shareholders, treatment as movable property, and requirement of numbering. **(7 Marks) (MTP Sept 25 Series 2)**

Ans. **Nature of shares:** Section 2(84) of the Companies Act, 2013 defines the term 'share' which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding a share is entitled.

Share is an interest in the company: Farwell Justice, in *Borland Trustees vs. Steel Bors. & Co. Ltd.* observed that "a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount". The shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.

Shares are a movable property: According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Shares shall be numbered: Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

Q-63 Sunrise Infrastructure Ltd. was incorporated with the object of developing residential housing projects as specified in its Memorandum of Association. The Board of Directors decided to invest a substantial part of the company's funds in speculative trading of shares of other companies, hoping to earn quick profits. When the shareholders questioned this act, the directors argued that since the company was duly incorporated and had wide powers of management, their decision was valid. Examine, with reference to the doctrine of ultra vires, whether the directors' action is binding on the company. **(RTP Jan 26)**

Ans. The Memorandum of Association defines the scope of activities of a company. Any act done beyond the objects stated in the memorandum is ultra vires and void. The doctrine of ultra

vires, established in Ashbury Railway Carriage and Iron Co. Ltd. vs. Riche, holds that an act beyond the powers of the company cannot be ratified even by unanimous consent of all shareholders. Such acts are wholly void and cannot bind the company.

In the instant case, the object clause of Sunrise Infrastructure Ltd. restricted the company's business to real estate development. However, the directors diverted funds into speculative share trading, which was not included in the memorandum. This activity was therefore beyond the powers conferred on the company.

Therefore, the directors' action is ultra vires the company and, therefore, void. The company is not bound by such acts, and the funds utilized for speculative purposes can be recovered. The doctrine of ultra vires protects shareholders and creditors by ensuring that the company's capital is used only for authorized purposes.

Q-64 Bharat Infrastructure Ltd. was incorporated in India with 55% of its paid-up share capital held by the Central Government, 20% by a State Government, and the remaining 25% by private investors. Some private shareholders argued that government control was not absolute and therefore the company should not be classified as a Government Company. Decide with reference to the Companies Act, 2013. **(RTP Jan 26)**

Ans. Section 2(45) of the Companies Act, 2013 defines a government company as one in which not less than 51% of the paid-up share capital is held by the Central Government, State Government(s), or jointly by the Central and State Governments.

In the instant case, the Central and State Governments together held 75% of the paid-up share capital of Bharat Infrastructure Ltd. The remaining 25% was private investors. Taking into account the provisions of the Companies Act, 2013, Bharat Infrastructure Ltd. is a Government Company, since the combined government holding exceeds 51%. The argument of the private shareholders is untenable.

Q-65 Mr. RM was engaged in the trading of handloom items with his wife. One of their friends suggested that they should form a private limited company. By corporatizing their business, they could gain better recognition and even explore export opportunities.
They established M/s RM Private Limited with both as the sole members. They got the work orders on job basis from local artisans, sold their products in the Indian market, and exported them as well. The company also secured a line of credit from the bank amounting to ` 30 lakhs.
Tragically, Mr. RM met with an accident and passed away. Now Mrs. RM was the only member in the private limited company. A family friend suggested including her brother as a member, but she declined. Instead, she decided to convert the private limited company into a One Person Company (OPC) and nominate her brother, Mr. AK, who is currently employed in London, UK.
Examine with reference to the Companies Act, 2013:

(i) Whether Mrs. RM's decision to convert the private limited company into a One Person Company (OPC) is legally valid; and

(ii) When Mrs. RM's decision to nominate her brother Mr. AK, as a nominee, is not legally valid? **(7 Marks PYQ Sep 2025)**

Ans. (i) A Private Limited Company can be converted into an OPC if it meets the eligibility criteria

under Section 2(62) of the Companies Act, 2013.

An OPC can have only one member and 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 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.

No person shall be eligible to become nominee in more than one OPC.

Further only a natural person who is an Indian citizen whether resident in India or otherwise-

- shall be eligible to incorporate a One Person Company;
- shall be a nominee for the sole member of a One Person Company.

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year. In view of the above, in the given case, Mrs. RM's decision to convert the Company into an OPC is legally valid.

(ii) Nominating Mr. AK may not be valid if he does not meet the residency requirement (i.e., if he has not stayed in India for at least 120 days in the preceding financial year). In that case, Mrs. RM must nominate another Indian resident.
(ii) **ALTERNATE ANSWER** Here, Mrs. RM's decision to nominate her brother Mr. AK, as a nominee is not legally valid in the case where he has obtained the foreign citizenship being in employment in London UK. Note: Since nothing is specified as regards the citizenship of Mr. AK, a benefit of doubt may be given to the students who assumes that Mr. AK has obtained the UK citizenship being therein employment. In that case he may lose the Indian Citizenship and shall be disqualified to be nominated as a nominee.

Q-66 Explain the Memorandum of Association (MOA) and Articles of Association (AOA) of a company. Also explain any three differences between MOA and AOA. **(7 Marks PYQ Sep 2025)**

Ans. **Memorandum of Association (MoA)**
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 contains the fundamental conditions upon which alone the Company can be incorporated. It is the very foundation on which the whole edifice of the company is built.

Articles of Association (AoA)
The Articles of Association of a Company are its Rules and Regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the Company. Articles of Association is in fact, the Rules, Regulations and Bye Laws for the internal management of the affairs of the Company.

The following are the key differences between the Memorandum of Association and the Articles of Association:

(1) Clauses - Under Section 4 of the Companies Act, 2013, a Memorandum of Association (MOA) must contain six mandatory clauses viz., the Name Clause, Registered Office Clause, Object Clause, Liability Clause, Capital Clause, and Subscription Clause. These clauses, which serve as a company's charter, define its fundamental identity, scope of operations, and the relationship between the company and the outside world. Whereas the Articles of Association of a Company shall contain the regulations for management of the company. Them Articles shall also contain such matters, as may be prescribed but nothing prescribed in this sub-section shall be deemed to prevent a Company from including such additional matters in its Articles as may be considered necessary for its management.

(2) Objectives: Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.

(3) Relationship: Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

(4) Alteration: Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.

(5) Ultra Vires: Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

Q-67 Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by M/s Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal. **(5 + 2 = 7 Marks PYQ Sep 2025)**

Ans. Yes, I agree that a company is an Artificial Person.

A Company incorporated under the provisions of the Companies Act, 2013 is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. Further, the Company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

As the Company is an artificial person, it can act only through some human agency, viz., directors. The directors can control affairs of the company but they are not the "agents" of the members of the company. The directors can either on their own or through the common seal, if any, (of the company) can authenticate its formal acts. Further, the Company being an artificial person has perpetual succession and it continues to exist until it is legally dissolved. The members of a company may come and go but the company will go on forever.

However, the Company being an artificial person cannot have citizenship, lack of physical action and corporate veil can be lifted.
Thus, a company is an artificial legal person.

Authorization by a Company not having a Common Seal:
In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the Company has appointed a Company Secretary. Hence, M/s Beeta Limited can do the authorization as mentioned in the above manner

PRABJOT SINGH

LESSON-7

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

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

Q-2 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. **(Module Q) (MTP Sept 24 Series 1)**

Ans. 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.

Q-3 Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence? **(Module Q) (MTP June 24 Series 3)**

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

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.
Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to

the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

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

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

Q-4 Rama executes a promissory note in the following form, 'I promise to pay a sum of `10,000 after three months'. Decide whether the promissory note is a valid promissory note. **(Module Q) (MTP Sept 24 Series 1)**

Ans. The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

Q-5 'Nakul' made promissory note in favour of 'Sahdev' of `10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881? **(Module Q) (MTP Sept 24 Series 2) (MTP Sept 25 Series 2)**

Ans. According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

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

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.
An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

Q-6 (i) With reference to provisions of the Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be complied with for not constituting such an offence? **(4 Marks PYQ Sept 24)**

(ii)

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

B. Ambiguous instrument **(3 Marks PYQ Sept 24)**

Ans. (i) According to Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

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

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

b) Demand for the payment through the notice: the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

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

(ii)

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

The following two features distinguish a cheque from bill

a) Must be drawn on a specified banker

b) It must be payable on demand

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

B. Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly."
Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument.

Q-7 Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario:

i. Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties. **(4 Marks PYQ Sept 24) (RTP Sept 25) (MTP Jan 25 Series 2)**

ii. Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company. **(3 Marks PYQ Sept 24) (RTP Jan 25) (RTP Sept 25) (MTP Jan 25 Series 2)**

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

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

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

The contract on a negotiable instrument until delivery remains incomplete and revocable. Delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the

indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57).

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid.
Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

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

In the instant case, the bill of exchange was:

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

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

Q-8 A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act. 1881? **(7 Marks PYQ June 24) (RTP May 2025) (RTP Sept 25) (MTP Jan 25 Series 1) (MTP Sept 25 Series 2)**

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

a)

i. If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

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

iii. if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or (iv) if the instrument not being payable at any specified place, he cannot after due search be found;

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

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

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

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

Q-9 Mr. Y issued a cheque for ` 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

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

ii. What would be your answer if Y issued a cheque as a donation to Mr. Z? **(7 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 1)**

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

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

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

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

In the instant case,

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

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

Q-10 What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881. **(RTP Sept 24) (MTP June 24 Series 1)**

Ans. Meaning of Negotiable Instruments: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument is passed to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments, namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Essential Characteristics of Negotiable Instruments

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

Q-11 Manoj purchased some goods from Sagar. He issued a cheque to Sagar for the sale price on 14th June, 2023. Sagar presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable? **(RTP Sept 24) (RTP May 2025) (MTP June 24 Series 1)**

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

However,

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

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

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

In the instant case, Manoj issued a cheque to Sagar for payment of the price of goods purchased from him. When Sagar presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Manoj. Sagar sued against Manoj under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sagar should have to make a demand of payment by giving a notice in writing to Manoj upto 18th July, 2023. In case, Manoj failed in making the

payment within fifteen days of the receipt of the said notice, Sagar could sue under section 138.

Q-12 Sachin bought 1000 Kg rice from Saurabh for ` 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin? **(RTP June 24) (MTP May 25 Series 1)**

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

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

b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

Q-13 A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it. On maturity, B did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether A would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881? **(RTP June 24) (MTP June 24 Series 2)**

Ans. Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

On the basis of the above law provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, A would not be discharged from liability even if the non-presentment by B as the promissory note was payable on demand and no specific place for payment was mentioned.

Q-14 What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881? **(MTP June 24 Series 2) (MTP Jan 25 Series 2)**

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

Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly." Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.

Q-15 What is a cheque under the Negotiable Instruments Act, 1881, and who are the parties involved? What are the essential elements of a cheque? **(MTP Sept 24 Series 2)**

Ans. **CHEQUE [Section 6 of the Negotiable Instruments Act, 1881]**
A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to Cheque

1. Drawer: The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
2. Drawee: The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
3. Payee: The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

Essential Characteristics of a cheque
According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

a) all the essential characteristics of a bill of exchange
b) Must be drawn on a specified banker.
c) It must be payable on demand.

Q-16 Utkarsh purchased some goods from Saksham for ` 50,000 on 14th August. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 pm Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August (3:00 pm). Saksham treated the bill as dishonoured for non-acceptance. Referring the provisions of the

Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance? **(MTP Sept 24 Series 2)**

Ans. According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

In the instant case, Saksham drawn a bill of exchange on Utkarsh and and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance.

Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

Q-17 State the Difference between promissory note and bill of exchange." **(MTP Sept 24 Series 1)**

Ans. Difference between promissory note and bill of exchange:

Basis	**Promissory Note**	**Bill of Exchange**
Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
Nature of Instrument	In a promissory note,there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
Parties	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
Payable to bearer	A promissory note cannot be made payable to bearer	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

Q-18 Explain the Rules as to compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee covered under the Negotiable Instruments Act, 1881. **(MTP June 24 Series 3)**

Ans. **Rules as to compensation (Section 117)**
The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

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

b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Q-19 Shiva gave a gift of ` 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act? **(MTP June 24 Series 2)**

Ans. Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, ofany debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

In the instant case, Shiva gifted a cheque of Rs. 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque forpayment and also informed the bank to stop the payment. On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

Q-20 What are the rules governing the compensation payable in the event of dishonour of a negotiable instrument under the provisions of the Negotiable Instruments Act, 1881? **(7 Marks PYQ Jan 2025)**

Ans. **Rules as to compensation (Section 117 of the Negotiable Instruments Act, 1881):**
The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

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

b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

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

e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Q-21 Anjali purchased various cosmetic products worth ` 15,000 during the last week from Sushil, a shopkeeper, on credit of one month. After a fortnight, she makes out a blank promissory note, signed it and delivered to Sushil who further endorsed it to Manish for the payment of his dues. Manish, who is holder in due course, filled up the due amount of ` 17,000 from Sushil and on maturity presented it to Anjali for payment but she refused to pay because the amount filled up is more than the agreed amount of ` 15,000. It is to be noted that the amount of ` 17,000 is covered by the stamp affixed on it. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether Anjali is liable to honour the promissory note to Manish for ` 17,000? **(4 Marks PYQ Jan 2025) (MTP May 25 Series 2)**

Ans. Section 20 of the Negotiable Instruments Act, 1881 reads as "Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder".
In the instant case, Anjali is not liable to honour the promissory note to Manish for ` 17000. She is liable only for ` 15000.

Q-22 Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns. However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on the provisions of the Negotiable Instruments Act, 1881, examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law. **(3 Marks PYQ Jan 2025) (MTP May 25 Series 2)**

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

In default of such presentment, the other parties thereto are not liable thereon to such holder.

So, presentment for payment must be made to the person primarily liable on the instrument, or in their absence, at the proper place during the usual business hours.

In this case, Priya presented the bill at Sanjay's office during regular business hours, but since Sanjay was not present, she left the bill with his assistant.

While leaving the bill with the assistant might be considered a practical step, it does not fulfil the strict legal requirement of presenting the bill directly to the drawee (Sanjay) or his authorised representative for payment.

Therefore, the presentation of the bill by Priya to Sanjay's assistant is not valid under law.

Q-23 "Explain the concept of 'presentment for payment' under Section 64 of the Negotiable Instruments Act, 1881. What are the consequences of non-presentment?"**(MTP May 25 Series 1)**

Ans. **Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]**
Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

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

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further

information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification.

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

Q-24 What is a Negotiable Instrument? Explain its meaning and essential characteristics. How does the Negotiable Instruments Act, 1881 classify instruments as payable to order or payable to bearer? **(MTP May 25 Series 2)**

Ans. Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

It is to be noted that Hundies, Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or usage.

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

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

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

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

Essential Characteristics of Negotiable Instruments

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

Q-25 i. "Delivery of an instrument is essential whether instrument is payable to bearer or order for effecting the negotiation." Discuss this statement with reference to provisions of the Negotiable Instruments Act, 1881. (3 Marks)

ii. Differentiate between a promissory note and bill of exchange **(4 Marks) (PYQ May 2025)**

Ans. i. As per Section 46 of the Negotiable Instruments Act, 1881, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee. Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

ii. Difference between promissory note and bill of exchange

Basis	**Promissory Note**	**Bill of Exchange**
Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
Nature of Instrument	In a promissory note,there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
Parties	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bill of exchange needs acceptance from the drawee.
Payable to bearer	A promissory note cannot be made payable to bearer	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

Q-26 Ram purchased a second-hand car from his friend Rohan for ` 5 lakhs on 10th November, 2022. He paid ` 4 lakh immediately and promised to pay ` 1 lakh within a year. But, he could not pay the remaining amount till December-2023. On 5th January, 2024 Ram received an invitation for Rohan's wedding which he could not attend but sent a cheque of ` 51,000 as gift by post.
When Rohan deposited the cheque, it was returned unpaid due to insufficient balance in the account of Ram. Rohan considered it as an offence under Section 138 of the Negotiable Instruments Act, 1881.
Advise
i. Whether Ram would be held liable for dishonour of cheque?
ii. Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881. **(7 Marks) (PYQ May 2025)**

Ans. According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

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

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.
Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

i. In the given question, Rohan received a cheque from Ram, for ` 51,000 as a gift for his marriage. In terms of section 138, cheque given as a gift does not fall within this section. Hence, Ram would not be held liable for dishonour of cheque.

ii. The explanation to the section provides that for the purpose of section 138 only a legally enforceable debt or other liability is to be taken into consideration. The cheque of ` 51,000 was issued in the nature of a gift and not as a part of the payment for the balance amount of car. Hence, Rohan was not justified in considering the dishonour of cheque, an offence under section 138 of the Negotiable Instruments Act, 1881.

Q-27 Explain the legal provisions regarding presentment for acceptance of a bill of exchange under the Negotiable Instruments Act, 1881. What are the consequences of failure to present a bill for acceptance? Also, distinguish it from the presentment of a promissory note for sight. **(MTP Sept 25 Series 1)**

Ans. **Presentment for acceptance [Section 61 of the Negotiable Instruments Act, 1881]:** A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.
In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.
If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.
Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight [Section 62]: A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day.
In default of such presentment, no party thereto is liable thereon to the person making such default.

Q-28 Classify the following instruments as inland or foreign instruments as per the Negotiable Instruments Act, 1881 and justify your classification with proper reasoning.

i. A promissory note is made in Kolkata and is payable in Mumbai.
ii. A bill is drawn in Varanasi on a person resident in Jodhpur, but it is made payable in Singapore.
iii. A, resident of Agra, draws a bill of exchange in Agra on B, a merchant in New York, and B accepts it as payable in Delhi.
iv. A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India.
v. A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in Dubai. **(MTP Sept 25 Series 1)**

Ans. **"Inland instrument" and "Foreign instrument" [Sections 11 & 12 of the Negotiable Instruments Act, 1881]**
"Inland instrument": A promissory note, bill of exchange or cheque drawn or made in India and made payable in or drawn upon any person resident in India shall be deemed to be an inland instrument.
"Foreign instrument": A foreign instrument is one which is not an inland instrument.
In the instant case,

i. A promissory note made in Kolkata and payable in Mumbai is an Inland instrument
ii. A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore) is an Inland instrument
iii. A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in New York. And B accepted the bill of exchange as payable in Delhi. In this case, the bill of exchange was drawn in India and also payable in India. Hence, it is an inland instrument.

iv. A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India. It is a Foreign instrument as it is Drawn outside India, payable in India.

v. A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in Dubai. It is a Foreign instrument as it is Drawn outside India, on a person residing outside India, payable outside India.

Q-29 Mr. Anil drew a bill of exchange in Kolkata on Mr. Bimal, a resident of New York, and made it payable in Delhi. On maturity, the bill was dishonoured, and Anil sued Bimal in India claiming interest at the rate of 18% as applicable in Kolkata. Bimal contended that his liability was governed by New York law, where the rate of interest was only 6%. Decide the liability of Bimal with reference to the provisions of the Negotiable Instruments Act, 1881. **(RTP Jan 26)**

Ans. Section 11 of the Negotiable Instruments Act, 1881 defines an inland instrument as a promissory note, bill of exchange, or cheque drawn or made in India and either payable in India or drawn upon a person resident in India. Section 12 provides that any instrument which is not an inland instrument is deemed to be a foreign instrument.

Further, Section 134 of the Act states that in the absence of a contrary contract, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated by the law of the place where the instrument is made, whereas the liability of the acceptor or indorser is determined by the law of the place where the instrument is payable.

Here, the bill was drawn by Anil in Kolkata on Bimal, a resident of New York, and was made payable in Delhi. On dishonour, Anil claimed interest at 18% as per the law prevailing in India, while Bimal claimed that his liability should be limited to 6% under New York law.

Since the bill was drawn in India but made payable in Delhi, the liability of the acceptor (Bimal) is governed by Indian law, i.e., the law of the place of payment. Therefore, Bimal is liable to pay interest at 18% as claimed by Anil.

Q-30 "Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery." Classify the different types of Negotiable instruments according to manner in which it is made as per the provisions of the Negotiable Instrument Act, 1881. **(7 Marks PYQ Sep 2025)**

Ans. Negotiable Instruments: Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery. The property in such an instrument pass to a Bonafide transferee for value.

Classification of Negotiable Instruments according to manner in which it is made in terms of the Negotiable Instruments Act, 1881 (the Act).

(1) "Bearer Instrument" and "Order Instrument" [Section 13]

Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words "or bearer" or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.

(2) "Inland Instrument" and "Foreign Instrument" [Sections 11 & 12]
"Inland Instrument": A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.
"Foreign Instrument": A foreign instrument is one which is not an inland instrument.

(3) Inchoate and Ambiguous Instruments
Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ endorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete.
Ambiguous Instrument: As per Section 17, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

Q-31 (i) Mr. K draws a bill of exchange payable 60 days after sight to Mr. J. Mr. J holds the bill for 30 days before presenting it to Mr. N, the drawee, for acceptance. Mr. N accepts the bill upon presentation. Decide as per the provisions of the Negotiable Instruments Act, 1881, when does the maturity period of the bill commence? **(3 Marks PYQ Sep 2025)**

(ii) A promissory note is made payable at a specific place on a fixed date. The holder, Mr. Mohan presents the note for payment two days after the due date because of unforeseen circumstances.
Decide each of the following as per the provisions of the Negotiable Instruments Act, 1881:

(A) Does the delay in presentation affect Mr. Mohan's right to recover the amount? **(2 Marks PYQ Sep 2025)**

(B) Under what circumstances can a delay in presentation be excused according to the Act. **(2 Marks PYQ Sep 2025)**

Ans. (i) According to Section 61 of the Negotiable Instruments Act, 1881, when a bill is made payable "after sight", the maturity period is calculated from the date of acceptance of the bill by the drawee. The period of holding the bill by the payee before presenting it for acceptance does not affect the commencement of the maturity period.

In the present case, Mr. K draws a bill payable 60 days after sight in favour of Mr. J. Although Mr. J keeps the bill for 30 days before presenting it to Mr. N, the drawee, the maturity period will not begin until the date on which Mr. N accepts the bill. Therefore, the maturity period of the bill commences from the date of acceptance by Mr. N.

(ii) (A) No, Mr. Mohan's right to recover the amount does not get affected due to the delay in presentation of the promissory note two days after the due date because of unforeseen circumstances as it is provided under Section 75A of the Negotiable Instruments Act, 1881.
(A) ALTERNATE ANSWER
Yes, the delay in presentation could affect Mr. Mohan's right to recover the amount. According to section 64 of the Act, a promissory note must be presented for payment at

maturity. Failure to do so may discharge the maker from liability to the extent of any loss caused by the delay.

(B) Excuse for delay in presentment for acceptance or payment (Section 75A) Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.

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