TopLad

CMA INTER GROUP-1

VOLUME-1

COMMERCIAL LAWS

BY

CA RAGHAV GOEL

II www.toplad.in II info@toplad.in II 9953155556

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INDIAN CONTRACT ACT, 1872

Contract Act, 1872

Introduction

1. It applies whole of India excluding J&K.

2. It was implimented by British India so, it is based upon English contract law.

3. In General language transaction and contract are same but they are techniqually different.

4. Whenever there is a business Activity, there are 2 parties who :-

   (a) Do something for each other.
   (b) Have done something for eachother.
   (c) Will do something for eachother.

5. So, there can be following situations :-

Next page...

	Party 01	Party 02.	
1.	Done	Done	T
2.	Done	Doing	T
3.	Done	Will do	C
4.	Doing	Doing	T
5.	Doing	Done	T
6.	Doing	Will do	C
7.	Will do	will do	C
8.	Will do	doing	C
9.	Will do	dond	C

6. In this table contract is present only in those situations where future element is present.

7. If everything is present or past and nothing is pending for future, it can never become Contract.

8. Contract is called futurastic Concept because it is based on promise to be performed in future.

9. It means contract generates liability because of promise only.

10. However, there are 5 situations in which liability arises without any promise or contract.

11. Such five situations are called Quasi Contract.

12. So in total we have contract normally created and Quasi Contract automatically created.

13. A normal Contract has promise and liability but Quasi Contract has no promise, only liability.

14. Quasi is called Quasi because it contains half features of the Contract Law.

15. Liability of the persons make in contract will be same whether it is normal or it is Quasi.

16. It doesnot matter whether the Contract is oral or written, both of them are equally valid.

17. Yes, it is difficult to prove oral contracts but they are still valid.

18. Contract can also be implied in nature, where we don't say anything, we don't write anything but contract arises by behaviour and action.

Creation of Contract.

1. Contract is created by making promise

2. Promise can be unilateral and bilateral.

3. Unilateral promises can never become contract because there is no liability to fulfill such promises.

4. Bilateral Promises have responsibility from both sides so it can become contract.

5. It means when there is something in return, promise can become contract.

6. This <u>something in return</u> is called consideration.

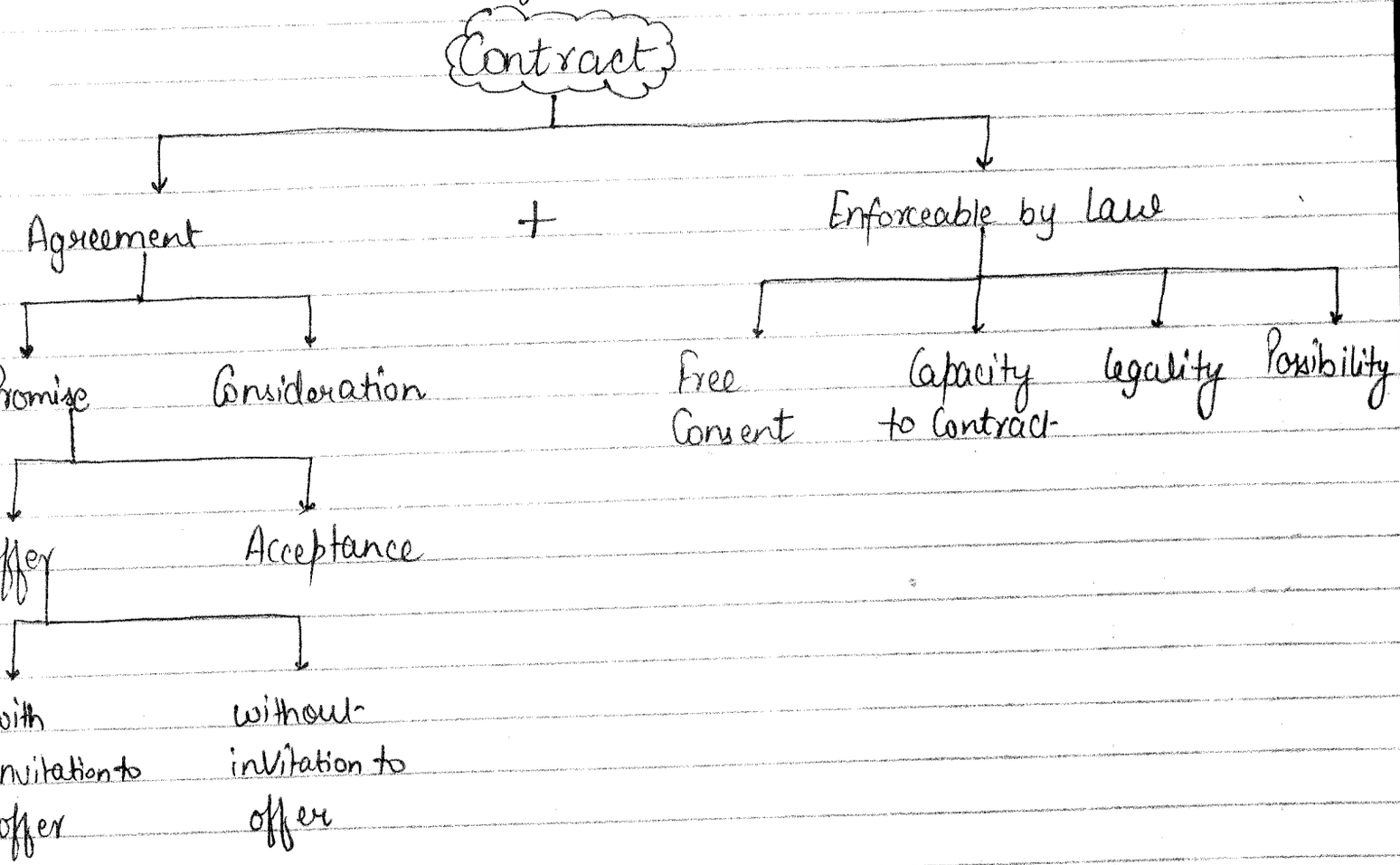
7. It means when promise and consideration comes together, contract can arise but it is called Agreement only.

8. If the agreement is such that it can be taken to court of justice, it can be called a Contract.

9. It means every contract is agreement but every agreement is not contract.

10. It means agreement which is enforceable by law is a Contract.
↳ can be taken to court

Creation of Contract Summary –



Explanation

1. First of all, agreement is created, whether oral or written.

2. There after, it is verified whether it is enforceable or not.

3. So, first of all we have to understand how agreement is created and then we will see whether it is converted into contract or not.

4. Agreement is created when promise is created with consideration.

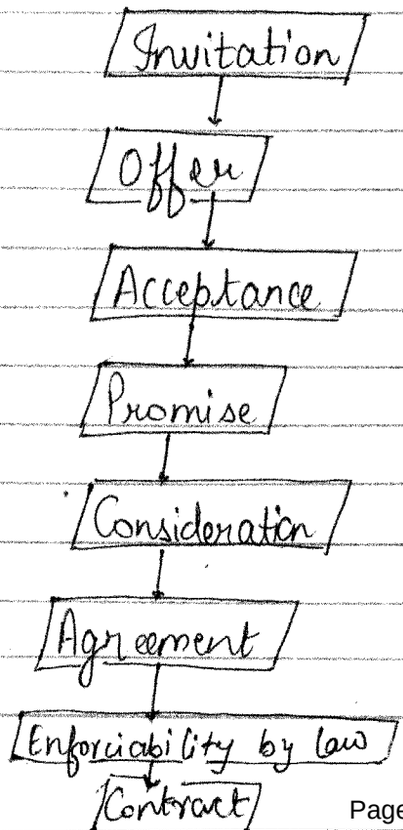
5. Promise is created when the offer is accepted.

6. Offer is created either with invitation or without invitation.

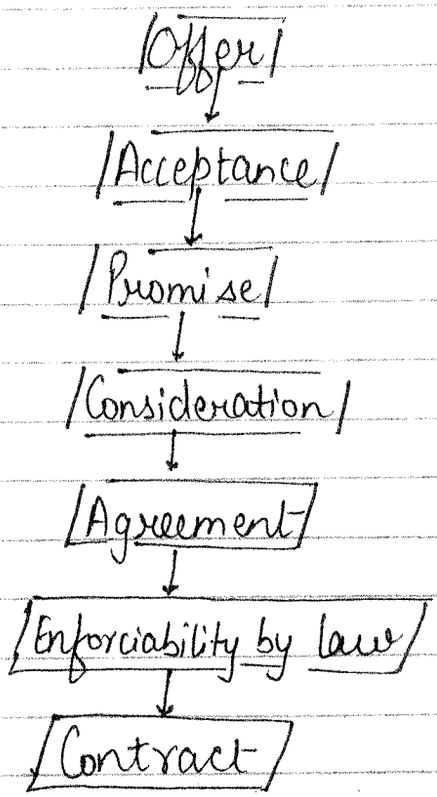
7. Invitation means some kind of attraction due to which we place offer.

8. Offer and Invitation to offer donot create any responsibility, responsibility arises only if the offer is accepted and it becomes a promise.

9. So, if the Invitation to offer is present, steps are as follows :-



(10) If Invitation to offer is absent, steps will be as follows :-



11. So it is clear that invitation to offer may or may not be present but all other elements are compulsory to be present.

12. In other words, Contract arises either because of need or intention arising because of invitation.

Essential elements of Valid Contract

1. There must be a valid offer.
2. It must be accepted by offree.
3. There must be consideration.
4. There must be free consent.
5. There must be capacity to do contract.
6. It must be legal in the eyes of law.
7. It must be posible for humans.

Offer

1. When a person signifies (expreses) his willingnes to do or not to do something, with a view to obtain assent (सहमति) of another person, it is called Offer or Proposal.
2. In other words, offer must be communicated to the person from whom we need acceptance.
3. Offer can be expressed or implied.
4. If the offer is done to a specific person, it is called Specific offer.

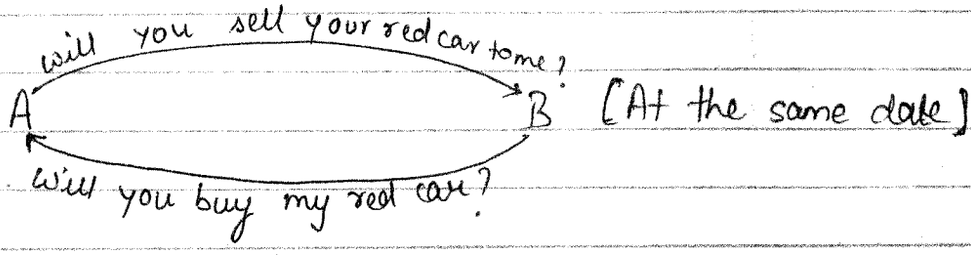
5. If the offer can be accepted by anyone, it is called General offer.

6. If the offer is available for acceptance, it is called Open offer.

7. If the offer is closed, it is also called Lapsed offer.

8. When two persons make offer to each other which is exactly the same and at the same time, in ignorance of each other's offers they are called Cross Offers.

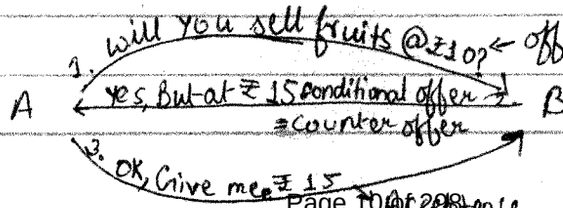
9. These cross offers will cancel each other because both have become Offerer and both have become Offree.



10. When the offer is made by one person, another person can either say 'Yes' or 'No', he cannot put any condition to his Yes or No.

11. If the offree puts condition in his acceptance, such conditional acceptance is called Counter Offer.

12. Counter offer cancels the original offer.



13. In the other words when the offeree becomes offree it is called Counter Offer.

14. Offer must be clear and definite which means it is should not have dual meanings.

15. Offer can be cancelled, provided it is not accepted yet.

16. Offer lapses in following circumstances :-

(a) When it is not accepted within time.

(b) When it is accepted in a manner other than prescribed manner.

(c) When offree rejects to accept.

(d) When offeror or offree dies.

(e) When offree makes counter offer.

Acceptance

1. Acceptance can be expressed or Implied.

2. If it is done by words spoken or written, it is called Expressed.

3. If it is done by conduct, it is Implied.

4. Acceptance must be communicated either directly or Indirectly.

5. Acceptance should be given only by that person to whom offer was made (Specific offer).

6. Offer can be accepted only by that person who has knowledge of offer. (General offer).

7. Acceptance must be unconditional.

8. Generally acceptance cannot be cancelled, but it can be cancelled if it had not reached the offerer.

9. In other words, if we want to cancel the acceptance, we must make sure that communication of cancellation should reach before communication of Acceptance.

10. If communication of acceptance and communication of cancellation both reach together, whichever is read first will apply.

Void and Voidable Agreement

1. If everything is valid, as it should be, it will become contract.

2. If something is wrong, there are two possibilities :-

(a) It is so wrong that we cannot make it valid.

(b) It is wrong but we can consider it as valid.

3. If it is so wrong that we cannot make it valid, it is automatically cancelled.

4. Such cancelled agreements are called Void Agreements.

5. Void becomes void because of following 3 reasons :-

(a) It has become Impossible.

(b) It has become Illegal.

(c) It is made void by law.

6. If a contract is wrong but we can forgive that person and can make it valid, it is cancellable and not cancelled agreement.

7. Such cancellable agreements are called Voidable Agreement.

Void Agreement V/s Void Contract

1. Some Agreements are wrong from the beginning.
2. They never become Contract. ~~So the~~
3. So, they are called Void Agreement or Void - ab - initio.
4. Some agreements are valid in the beginning.
5. They become contract.
6. But after becoming contract, something happens that it becomes invalid.
7. It is called Void Contract.

Agreement Already Declared Void By Law

Generally, Illegal and impossible agreements are called Void. However, there are few Sections in the contract law which specify already declared void agreements. They are as follows :-

(a) If Consideration and object are partly illegal - Sec 24

(b) Agreements without consideration - Sec 25

(c) Agreement in Restraint of Marriage. - Sec 26

(d) Agreement in Restraint of Trade – Sec 27.

(e) Agreement in Restraint of Legal Proceeding – Sec 28.

(f) Uncertain Agreements – Sec. 29.

(g) Wagering – Sec 30.

Explanation

1. If Consideration and object are partly Unlawful

Sometimes consideration and purpose are partly legal and partly illegal in such scenerio, the whole agreement becomes illegal. If a part is illegal, even the legal part also becomes illegal.
For Example:- If a house was given on rent with a condition that rent will become double if house is used for kidnapping, Rent cannot be recovered.

2. Agreement without consideration.

Consideration is a compulsory element. If it is absent, the agreement does not get generated. It means promises made without consideration have no meaning. However, in following circumstances, consideration may be absent.

(a) If something is given free of cost because of Natural Love and Affection but it should be in writing and registered.

(b) Whensome is doing something for someone else against which something has already been done by that person.
For Example :- If A saved B, from drauning. Aftersome time, B gave ₹ 1,00,000 to A, this is valid.

(c) When there was a loan which was time ~~bared~~ barred, which means a loan which is three years old from the date of repayment. Generally, this loan need not to be paid. If paid, it is valid.

(d) When something was given as gift but it should be in writting and registered.

(e) When someone gives gurantee for a loan taken by someone else, gurantee gets nothing. It is still valid.

(f) When agent is appointed, agency is valid even without consideration such as lawyer is the agent of client and he may not take fees.

3. Agreement in Restraint of Marriage

Any agreement which is done to cancel or stop a marriage is Void. However, if it is a case of marriage of minor, such stopping is allowed.

4. Agreement in Restraint of Trade

Generally, there can be no agreement to cancel or stop busines of anyone but if it is legal and genuine, it can be allowed.
For Example :- Ram sold his goodwill to Mohan and agreed that Ram will not do same business with same name in a particular locality with in a particular time period, it is allowed.

5. Agreement in Restraint of Legal Proceedings

Any agreement by which we stop someone from going to the court or we are interfering in the court proceedings, it is Invalid. However, Arbitration is allowed.

6. Agreements void for Uncertainty

Any agreement of which meaning is uncertain, is void. Sometimes, language of agreement is not clear so, it is not meaningful.

Void → शून्य
Illegal → गैर कानूनी

7. Agreement by way of Wager

Wager means Betting. When two persons bet for something, whether they win or lose, it is invalid. So it is void. However, in Gujarat and Maharastra, it is Void ~~also~~ as well as illegal. Moreover, Horse Racing upto ₹500 is valid. If central Government prescribes a higher amount, that amount will apply on horse race.

CONSIDERATION

1. Something In Return is called Consideration.
2. It must be valid in the eyes of law.
3. It may be more, may be less, which means need not to be adequate.
4. It must be at the desire of Promisor.
5. If it is a matter of art and skill, it must be provided by the same person, otherwise by any person.
6. Consideration may be ~~do~~ to do or not to do something.
7. Consideration may be past, present and future.
8. It must not be illusory.
9. It must not be something which a person is already bound to do

for Example :- A person ~~xxxg~~ was caught by fire. His father announced ₹ 10,00,000 as price money to be awarded to someone who saved his son. A fire servicemen came and saved his son, he cannot claim price money.

10. It should not be against Public Policy. (Public Policy means anything which is accepted by society).

11. Consideration must be possible.

PRIVITY OF CONTRACT

1. Privity means Relationship.

2. As per this ~~D~~ doctorine, strainger do a contract can not sue.

3. It means the person who is in the contract can sue to demand his rights but any other person cannot.

4. However, in the following cases, Strainger can also sue.

(a) When a trust is created, the person who opens the trust is called Sponsor, the person who manages the trust is called Trustee, the person who receives benefits is called Beneficiary. Agreement was made between sponsor and trustee but Beneficiary can also file a case to demand his rights.
For Example:- G.D Birla created a trust and appointed a trustee to distribute free food to the citizens of Ghana,

citizens of Ghana can file a case against trustees.

(b) When there is a marriage settlement, partition or other family arrangement, anyone who gets affected by the agreement can file a case. For Example :-
Mr. Ram Kishor Sharma has four, all of them were married. Partition agreement was made among father and his four sons. Getting furious by this all the daughter-in-law can file a case to revise partition agreement.

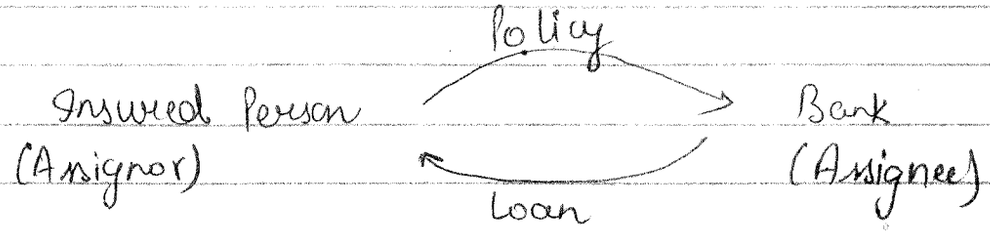
(c) When someone says something about someone and that someone is silent & people will presume that he has agreed, that is called Estoppel.
For Example :- A told B that C is his partner but C is silent, people will presume that C is a partner. Agreement is made between A and B but C can also sue.

(d) In case of agency, Contracts are made by agent but all the benefits, loses, duties, rights and liabilities belong to the principle. So, agreement is made by agent but principle can also sue.

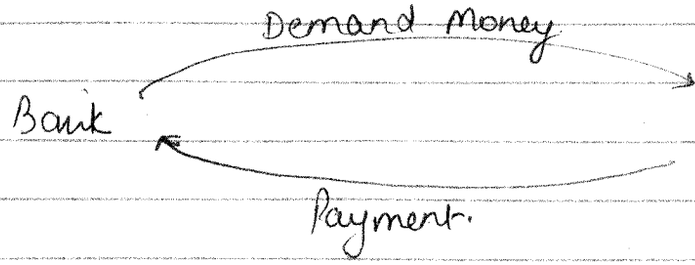
(e) When insurance policy is purchased, buyer of the policy receives the benefit himself or after his death, his nominee receives the benefit, however, sometimes, such policy is given as ~~secuti~~ security for a loan, this is called Assignment. Person taking loan is called Assignor and the bank will be called Assignee. If the person who took loan dies, bank can demand amount of insurance.

C1. Insurance Co. ⟷ Insured Person

C2.



C3. Insured Person dies



Legality of Object

1) Object means a purpose for which contract is made.

2) Such purpose must not be illegal, fraudulent, immoral, against public policy.

3) If the object behind consideration is unlawful, it will be void.

4) It is related to the fact that every illegal is void but every void is not illegal.

E - Contracts

1. Electronic Contracts are paper less Contract.

2. They are made through Internet and Communication technology.

3. Such contracts also follow the same principles of a normal contract.

4. It means methodology of making contract is different but contract is the same.

5. Such contracts have speed, accuracy and reliability.

6. Such contracts donot carry mannual signing.

7. Such contracts are regulated by IT Act, 2000.

8. It can be called E-commerce and M-commerce

9. Validity of such contracts cannot be challenged just because there is no paper.

Who are Competent To Contract

1. Generally, everyone is competent to enter into a contract.

2. India doesnot have any specific restrictions on people making the contracts.

3. However there are few restrictions regarding making contracts with respect to certain people, certain situations, certain contracts.

4. They are as follows :-

→ Minor :

(a) Minor means a person whose age is less than 18 years.

(b) However, if both the biological parents have died, minor remains minor upto 21 years.

(c) Apart from the limit of 18 & 21, there are other limits for different purposes such as Age of Marriage, Age of Drinking, Age of tobacco Consuming, Age of Property Holding etc.

(d) Agreement with minor is Void-ab-initio.

(e) When the minor becomes major, he cannot even continue any contract made during minority.

(f) This is also called ~~Doct~~ Doctrine of Restitution, which doesnot apply on minor.

(g) Minor is never liable even if he makes a contract.

(h) However, minor can sue anyone to demand his rights.

(i) If a promise is made jointly by minor and major, the contract is valid but minor cannot be sued upon.

(j) If somebody supplies ~~neeess~~ neccesities, to a minor, its value can be recover from his personal property but only from his property.

→ Unsound Mind Person :

(a) If a person can make ~~Has~~ rational judgement, which means judgement done after comparing positives and negatives.

(b) A person can be put in 3 ~~Categories~~ categories :-

1. Permanently sound mind.
2. Permanently unsound mind.
3. Temporary sound, Temporarily Unsound.

(c) The person who is permanently unsound is called Idiot.

(d) Person who is temporarily unsound is called Lunatic.

→ The person who is

(e) Idiot cannever enter into contract but lunatic can enter into contract when lunancy is not there.

→ Alien Enemy :

(a) Alien Enemy means citizen of that country with which India is at war.

(b) After the war is over, contract can be done.

(c) It also means that contract with Alien friend is valid but Alien Enemy is void.

→ Foreign Sovereign and Ambassadors:

a) Foreign Ambassador means Representatives of other countries coming to India.

b) These people enjoy privilages and immunities in India.

c) They can sue Indian citizens but Indian citizens cannot sue them.

d) So, contracts cannot be made with them.

→ Convicts :

(a) Convict is a person who is under imprisonment.

(b) A convict is already ~~surv~~ serving sentence so contract is not possible with him. jail.

→ Insolvent :

(a) Insolvent is a person who has been declared by court as Insolvent.

(b) Such person has shortfall of assets as compared to liabilities.

(c) As such person is already unable to fulfill his liabilities, no contract can be done with him.

→ Company or Statutory Bodies :

(a) Company means as Company as per Companies Act, 2013.

(b) Statutory body is any organisation for which separate Act has been made.

(c) They can enter into contract but only as per there articles of Association.

(d) If something is done, which is not as per articles, Board of Directors will be personally liable.

5. Free Consent :-

(a) Consent and Free Consent are two different things.

(b) Consent means when two persons agree upon the same thing in the same sense.

(c) This is also called Consensus - Ad - Idem.

(d) Free consent means, that concent in which all the following elements are absent :-

- → Coercion
- → Undue Influence
- → Fraud
- → Misrepresentation
- → Mistake

(e) Coercion means committing or threating to commit an activity denied by Indian Peral code.

(f) Coercion also includes threatning to commit suicide.

(g) There are some situations which need ~~clear~~ clarification whether they are coercion or not, which are as follows:

i. Threatning to file a case is not coercion.

ii. Charging high prices, high interest rate is not coercion.

iii. As per decision given by Madras High Court in the case of Amraju V/s seshamma, threating to commit sucide is coercion but sucide is not coercion.

(h) undue Influence means a relationship in which one person is in a position to dominate the will of another person.

(i) Such undue Influence is deemed to exist in the दबाव में ली गई है following relationship :-

1. Parent & child
2. Guardian & ward.
3. Doctor & patient
4. Solicitor / lawyer & client.
5. Trustee & beneficiary [जिसको पैसा प्राप्त होगा]
6. Religious advisor & disable.
7. finance & financee.
8. Master & Servant.
9. Teacher & student.
10. Employer & Employee.

(j) Undue Influence doesn't exist in the following relationship :-

1. Landlord & tenant
2. Debtor & creditor
3. Husband & wife.

(k) Fraud means actual deception or intention to deceive.

(l) Fraud includes following things as well :

i. Suggestion about thing which we know, should not be given.

ii. Active concealment of fact.

iii. Promise made without any intention of performing.

iv. Any other activity which results in deception.

(m) Silence is not fraud but when it is duty to speak, it is fraud.

(n) Half-Truth is also fat fraud if it is creating deception.

For Example :- If prospectus says that dividend was distributed but it didn't show that dividend was paid out of capital, it shall be fraud.

(o) Fraud is always intentional.

(p) Misrepresentation means unintentional wrong statement.

(q) It also means the statement given by innocent person without any intention of giving damage to others.

(r) The difference between fraud & misrepresentation as very narrow because everything is dependent on the intention. If it is right, it is misrepresentation & if it is wrong, it is fraud.

(s) Mistake means unintentional wrong action.

(t) Mistake can be unilateral & bilateral.

(u) If it is unilateral, the other party may or may not cancel the contract.

(v) If the mistake is bilateral, both the parties are at mistake so there agreement will be ~~called~~ cancelled Compalsarily.

(w) Mistake can be about law or about fact.

(x) If the mistake is about law running in India, punishment has to be there.

(y) If the mistake is about fact, it shall be one of the following types :-

i. Regarding Existence
ii. Regarding Identity
iii. Regarding Quality
iv. Regarding Ownership
v. Regarding Rice
vi. Regarding Impossibility.

→ Free consent & void v/s voidable :

(i) Fraud is voidable.
(ii) Coercion is voidable
(iii) Undue Influence is voidable
(iv) Misrepresentation is void.
(v) Mistake, if it is unilateral, it is voidable, if it is bilateral, it is void.

→ Quasi Contract :

(i) Generally contract arises after making promises.
(ii) Contract gives birth to Obligation.
(iii) It means we can say that promise gives birth to obligations.
(iv) However, in following 5 situations, obligation arises without any promise.

1. Claim for necessaries supplied to a minor or incompetent person.

If necessaries are supplied to minor or incompetent person, such person can claim value of such necessaries from the personal property of the person to whom necessary where supply if such person doesn't have any property there is not liability.

(2) Re-imbursement to person paying money due by another, in payment of which he is interested.

When a payment was suppose to be made by someone but actually made by someone else who was himself interested in such payment, can demand re-imbursement even if payment was made without asking. If the same payment is done by someone who is not interested at own, can't demand payment reimbursement.

(3) obligation of person enjoying benefits of Non-Gratuitous acts :- When a person does something free for us we must confirm whether it is free or paid. We don't confirm and continue to enjoy the benefits we will have to pay without any promise this payment without promise is called Quasi.

4) Responsibility of finder of goods :-

When we find something, lost by someone, we will have to return it to the true owner. This is called Quasi because responsibility to return is arising without any promise. Any expense incurred in finding the true owner can be recovered from the true owner.
If expense of searching the true owner has become $\frac{2}{3}$ or more of the value of goods, finder becomes the owner.

5) Liability of person to whom money is paid or thing delivered by mistake or under coercion :-

When payment or any article reaches to the wrong person, such wrong person will have to give it back to the true owner. This is called Quasi because responsibility to return arises without any promise.

Contingent Contracts

1) Contracts can be conditional or unconditional.

2) Conditional contracts can have two types of condition:-

(a) Controlable Condition which is possible to be done by human being.

(3) uncontrolable condition on which human beings have no control and they take place automatically.

3) If the condition is controlable, such contract is called Conditional Contract.
For Example:- A promises B to give him ₹1,00,000 if B marries C. This is controlable condition.

4) If the condition is uncontrolable, such contract is called Contingent Contract.
For Example:- Insurance company promises Mr. A that ₹50,00,000 will be paid to family of Mr. A if Mr. A dies in next 20 years.

5) Such condition which is uncontrolable is also called Collateral Event.

6) It means a control which is dependent on collateral event is called Contingent Contract.

7) Such event can be about happening or non-happening.

8) If the contract is dependent on happening of something, such contract will be completed when the event happens and such contract will become void if the event doesnot happen.

9) If the contract is dependent on non-happening of any event, contract become complete when such event doesnot happen. The contract will become void if event happens.

10) This contingent contract shouldnot be confused with ~~wa~~ wagering which means betting. Both wagering and contingent contract carry uncertainty but wagering doesnot have any transaction and contingent contract has a transaction.

11) Wagering is invalid all over India but illegal in Gujarat & Maharashtra.

Discharge of Contracts

Discharge means ending the responsibilities in a contract. After the discharge, contractual relationship becomes over. It happens in following situations:-

1. Discharge by Performance.
2. Discharge by agreements
3. Discharge by lapse of time.
4. Discharge by operation of law.
5. Discharge by immpossibility of performance.
6. Discharge by breach.

→ Discharge by Performance → 1. Performance means fulfilling the obligation

2. Performance can be actual performance or attempted performance.

3. If it is actual performance, it is ~~atte~~ alright but if it is attempted performance, it is also considered valid because he completed his duty.

→ Discharge by agreement :→

1. When we make an agreement to discharge the original agreement, it is also a valid discharge.

2. A new agreement can be of following types :-

(a) Novation, which means replacing the old contract with new contract.

(b) Alteration, which means changing the terms and conditions of original contract but no replacement is made.

(c) ~~Ress~~ Rescission, which means contract is cancelled in between <u>without any damages</u>

(d) Wever, which means complete exemption from liabilities.

(e) Remission, which means lesser performance is accepted than the promnised one.

→ Diisch

3. Discharge by Lapse of Time :-

(a) Some contracts and payments are time based, whose benefit must be availed within the given time.

(b) If such time gets over, contract becomes discharged.

4. Discharge by operation of law :-

→ When a contract is made as per law, law specifies how it can be discharged.

→ Contract law has prescribed four ways to discharge a contract.

(a) Death

(b) Insolvency

(c) Unauthorised Material Alteration

(d) Merger

5. Discharge by immpossibility of performance :
When the contract was made, activity was posible but later on something happened due to which posible activity became imposible. It is called Doctorine of frustration. It is also called Supervening (बाद में) Impossibility. When this becomes imposible, contract can't be perform.
for Ex :- The article which was agreed to be sold destroyed by fire so can't be sold, it is called frustation.

6. Discharge by Breach : Breach means non-performance which is intentional. Breach can be of two types :-

(a) Actual Breach (b) Anticipatory Breach.

If non-performance is done on the due date, it is actual breach and if the non-performance is communicated in advance, it shall be ~~antip~~ anticipatory breach.

Both the breach are bad in nature but actual breach is more serious than anticipatory breach whenever breach takes places, damages can be of 4 types which are as follows :-

a) Actual damages means amount of actual loss sufferred, neither more nor less.

b) Liquidated damages means predecided penalty when the agreement was made, penalty was also decided.

c) Nominal Damages : When there is no loss actually but we still demand damages, this is to a lesson to the defaulting person, such damages are called Nominal Damages.

d) Vindictive Damages : When amount of loss can't be computed in monetary terms but there is a loss of Goodwill or emotions, some damages are still awarded to create an example for all future generations. This will create a learning for all others not to repeat the same.

This is also called Exemplary Damages.

→ Special Contracts :

1. Indemnity : When a person promises to save another from a loss, caused to him, by the conduct of promisor or any another person, the person who is saving is called Indemnifier & the person who is being saved, is called Indemnified or Indemnity holder & such contract is called Indemnity.

2. It doesn't matter what is the reason of loss will surely save indemnity holder.

3. Generally indemnity has consideration but it is not compulsory. For Example :- When jewellery is losed, but found by police, Policy is ready to return the jewellery but it is asking us to sign a declaration. that jewellery belongs to us only. Declaration also says that if someone else comes to claim the jewellery. We will be responsible this declaration is called Indemnity Bond.

4. Indemnity holder can claim amount of of loss from Indemnifier, whenever there is any loss.

5. Following are practical examples of indemnity :-

(a) Bond signed by employee to remain with employer.

(b) Insurance policy sold by insurance company.

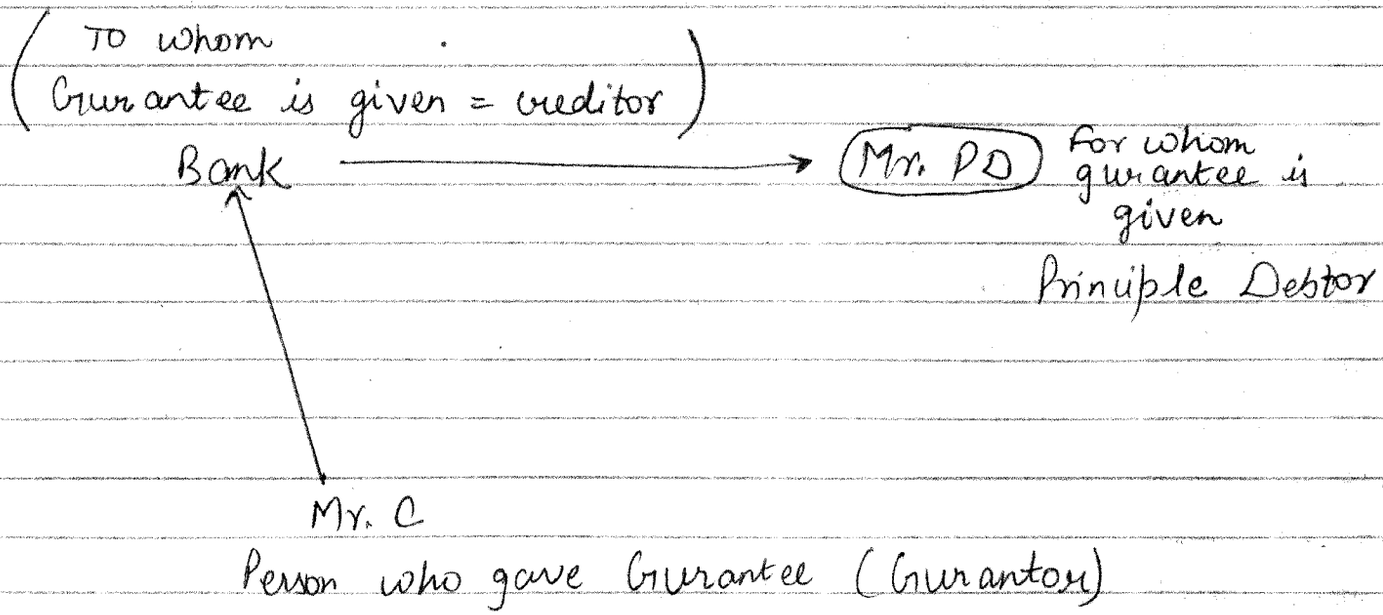
(c) Bond signed by family of patient in the hospital.

(d) Bond signed by true owner while claiming lost goods.

(e) Venture Capital Finding.

2. Gurantee :- Gurantee is a contract in which the person promises to pay or perform liability of someone else in case of his default.

(b) The person who is promising so is called Gurantor or surety & the person to whom this gurantee is given is called creditor.
The person for whom gurantee is given is called Principle debtor.



(c) In the contract of gurantee there are 3 persons & 3 contracts. They are as follows :-

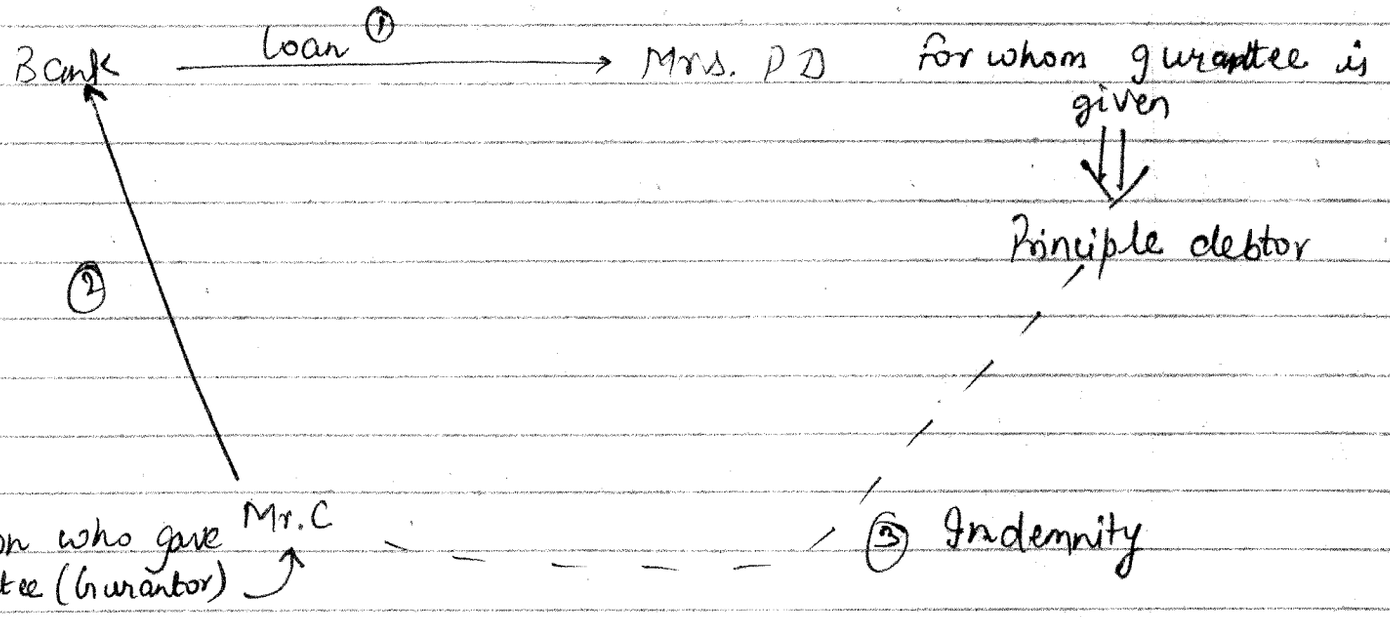
(i) Contract b/w creditor & principle debtor.

(ii) Contract b/w gurantor & creditor.

(iii) Contract b/w gurantor & principal debtor, which is of indemnity that if the gurantor faces loses, principal debtor will pay him.

(d) Contract b/w creditor & debtor & contract b/w gurantor & creditor have to be exprened but contract b/w gurantor & debtor may be exprened or implied.

To whom gurantee is given = creditor



(e) Indemnity doesnt have gurantee but gurantee has Indemnity.

(f) Gurantee is of two types which are continuing gurantee of stand alone gurantee.

(g) Stand alone gurantee applies on a single transaction and which it lapses.

(h) Continuing gurantee applies on a series of transaction which doesnot lapse upto a particular time or limit ~~already~~ already fixed.

(i) Gurantee once given can be revoked but a transaction which is already done will remain liability of Gurantee.
For Eg :- Mr. A applied for a loan of ₹5lakhs.
Loan was approved subject to the Gurantee given by Mr. B till date, Mr. A had taken ₹ 2lakhs out of ₹5lakhs after which B cancels his gurantee B will not be liable for further 3 lakhs but will be liable for this 2 lakhs.

(j) Gurantee will lapse if debtor and creditor makes a change in the loan agreement without asking gurantor.

(k) Liability of Gurantor and Principal Debtor ~~is~~ is co-extensive to each other which means both have equal liability and money can be demanded directly from gurantee without asking the principal debtor.

Bailment

1. When a person transfers his goods to another for some purpose upon a condition that same goods shall be returned once the purpose is over, is called Bailment.

2. It can be gratuitous and Non Gratuitous.

3. If it is Gratuitous, goods can be demanded even if purpose is not over and if the goods are defective, owner has no liability.

4. If the Bailment is Non-Gratuitous, goods cannot be demanded without completion of purpose and if the goods are defective, owner is responsible.

5. The person who gives his goods is called Bailor and the person to whom goods are given is called Bailee.

6. All the risk and reward which means all the accretion and depletion belongs to Bailor which means Owner.

7. It is the duty of bailee to take good care of the goods but only ordinary care and no special care.

8. If the ordinary care was taken but still some loss took place, bailee is not responsible.

9. Goods should be used only for the purpose they were given and if they were used in some other purpose, bailee is responsible.

10. Sometimes, goods get mixed with own goods, there can be two situations, A & B

(a) Goods are possible to be separated, then they should be separated at the expense of bailee.

(b) Goods are not possible to be separated, then suitable compensation should be given

11. Following are few clarifications regarding bailment :-

(a) Deposit of Bank Notes in a bank is not Bailment. because same note cannot comeback.

(b) Deposit of jewellery in a bank locker is not bailment because key of the locker available with us cannot open the locker without bank permission and bailment applies only in case of unrestricted employment enjoyment.

(c) Taxi with Driver is not Bailment, Taxi without driver is Bailment because we get freedom.

d) Parking will become bailment only if keys were also given.

(e) When utensils or kitchen equipments were handed over to housemaid, it is not bailment.

(f) When import duty is not paid, custom authorities keep the goods on hold, we can simply ~~rease~~ realese the goods after payment of duty, this is Bailment.

(g) A person took off his coat at the restraunt. The coat was hanged by waiter at the chair itself. The coat get lost. This was not the case of bailment as coat was not handed over to restraunt.

Pledge

1. Pledge is nothing but Bailment only.

2. When the same bailment is done to take a loan, it is called PLEDGE.

3. In the pledge, Bailor is called PAWNOR or PLEDGOR and Bailee is called as PLEDGEE or PAWNEE.

4. All the rules regarding bailment also apply in PLEDGE.

AGENCY

1. When a person is represented by some other person in course of dealing with 3rd parties, this relationship is called Agency.

2. Agency has 2 parties. The person being represented is called Principal and the person who is representing is called Agent.

3. Agency can be of following types :-

(a) Actual Agency
(b) Implied Agency
(c) Agency in Emergency.
(d) Ostensible Agency
(e) Sub Agent vs Substituted Agent

→ Actual Agency :- When Principal points agent as Agent deliberately it is Actual Agent. A person appoints someone to work on his behalf, this is Actual Agency relationship.
Example :- Consignor, Consignee, or Merchantile Agent.

→ Deemed Agency / Implied Agency :-

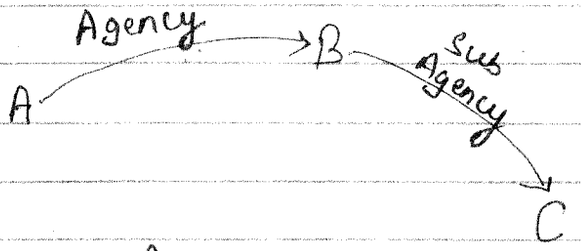
When a person is not actually an Agent but he still represents someone, such person is deemed to be an Agent. His profile is something else but it his activities became like Agency.

For Example :- Husband and wife are agent of each other, lawyer is the Agent of client, C.A. or Cost Accountant or C.S are agent of Employers, Partners are agent of each other.

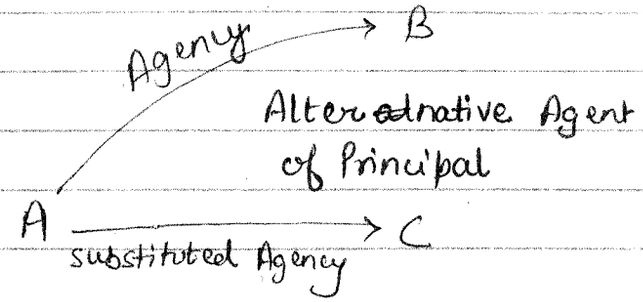
→ Agency In Emergency :- When situation arise in which a person helps us and perform our works, when either we are not present or we are in difficulties.
For Example :- Labour union fighting for a particular worker, Market ~~ass~~. association fighting for a particular business.

→ Ostensible Agency :- When a person falsely represents that he is agent of someone and that someone is silent, it is called Agency By Holding out.
When a person falsely represents that someone is his agent and that someone is silent, it is called Agency by ESTOPPEL.
This agency by Holding out and Agency by Estoppel together are called Ostensible Agency.

→ Sub Agent vs Substituted Agent:-



Agent's Agent
Total liability of C's work = B



liability of B & C is separate.

Agent of Agent is called Sub Agent. Subagent is appointed by original agent so principal is not liable for the mistakes of Sub Agent. Whole liability will be upon original agent.

Sometimes principal himself appoints additional agent or alternate agent, without any role of original agent, such alternate agent is called substituted agent.

Any mistakes committed by substituted agent will be his responsibility.

4. Agent is generally not liable personally because everything is done on behalf of principal.
However, agent becomes personally liable if he doesnot follows instructions of principal

5. Agent becomes the spokesperson of Principal so, anything said to him means said to principal and anything said by him means said by Principal.

6. Agency can be terminated in following ways :-

→ Mutual Concent
→ Termination by Agent
→ Termination by Principal
→ Time is over
→ Purpose is over
→ Incompetence to contract.

PRACTICE MANUAL

Fill in the blanks:

1. Proposal is other called as_____.

2. Uncommunicated communication cannot result in a ____ or _____.

3. Agreements of wagers are_____.

4. Consideration is of three types, ____, _____ and _____.

5. The person in respect of whose default the guarantee is given is called the _____.

6. The person delivering the goods is called the _____.

7. No consideration is necessary to create_____.

8. The ratification may be_____ or _____ in the conduct of the person on whose behalf the acts are done.

9. _____ is a person employed to do any act for another or to represent another in dealing with the third person.

10. A contract of bailment is_____, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of bailment.

Choose the correct answer

1. Which one of the following is not a quasi contract?

(a) Claim for necessaries supplied to person incapable of contracting, or on his account;
(b) Reimbursement of persons paying money by another, in payment of which he is interested;
(c) Uncertainty and futurity of the event to which it is related;
(d) Responsibility of finder of goods.

2. The breach of contract may be-

(a) Actual;
(b) Anticipatory;
(c) None of the above;
(d) Either of the above.

3. Which one of the following is not the feature of the contract of guarantee?

(a) There are two parties in this contract;
(b) The liability of surety is secondary;
(c) There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor;
(d) The surety gives contract at the request of the principal debtor.

4. A person may not become an agent-

(a) If he is of the age of maturity;
(b) If he is of unsound mind;
(c) Either of the above;
(d) None of the above.

5. Which one of the following is not a contract?

(a) A find B's purse and gives it to him. B promises to give him `1,000/-;
(b) A promises, for no consideration, to give `10,000/-;
(c) A agrees to sell a horse worth of `1,000/- for `10/-;
(d) A supports B's infant son. B promises to pay A's expenses in so doing.

6. Which one of the following is not a lawful object?

(a) A promises to obtain for B an employment in the public service and B promises to pay ` 2 lakhs to A;
(b) A agrees to sell his house to B for `25 lakhs for which B agrees;
(c) A promises to maintain B's child and B promises to pay `5,000/- per month;
(d) A promises to pay `1 lakh at the end of six months if C who owes that sum to B fails to pay. B promises to grant time to C accordingly.

7. Which one of the following is not the discharge by operation of law?

(a) By merger;
(b) By insolvency;
(c) By breach of contract;
(d) By the unauthorized alteration of items of a written document.

State whether TRUE or FALSE

1. Silent on the part of the offeree amounts to acceptance.

2. An agreement to which the consent of the promise is freely given is not void.

3. Electronic contracts are paperless contracts.

4. Claim for necessaries supplied to person incapable of contracting, or on his account is called contingent contract.

5. The surety gives contract at the request of the principal debtor.

6. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety.

7. Gratuitous bailment continues even after the death of either of the bailor or bailee.

8. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods released.

9. The sub agent is responsible for his act to the principal.

10. The termination of the authority of an agent causes the termination of the authority of all sub agents appointed by him.

Model Questions

1. What are the points to be taken into account for a valid offer?
2. What are the requirements for a valid contract?
3. When an offer may be lapsed?
4. What are two points to be taken into account in case of acceptance?
5. Describe the procedure to revoke offer and acceptance?
6. Under what circumstances the agreement becomes void?

7. Write short notes on –

(a) e-contracts;
(b) Quasi Contracts;
(c) Contingent contracts.

8. In which ways the contract may be discharged?
9. Differentiate between contract of indemnity and contract of guarantee.
10. Who is surety in a contract? What are his rights?
11. What are the rights of the finder of goods?
12. Differentiate pledge from bailment.
13. Discuss the duties of agents.
14. What are the obligations of the Principal to agent?
15. How the agency can be terminated?

Answer:

Fill in the blanks

1. Offer;
2. Promise, acceptance;
3. Void;
4. Executor, executed, past;
5. Principle debtor;
6. Bailee;
7. Agency;
8. Expressed, implied;
9. Agent;
10. Voidable at the option of the bailor.

Choose the correct answer

1. C;
2. D;
3. A;
4. D;
5. B;
6. A
7. C.

State whether TRUE or FALSE

1. FALSE;
2. TRUE;
3. TRUE;
4. FALSE;
5. TRUE;
6. TRUE;
7. FALSE;
8. TRUE;
9. FALSE;
10. TRUE.

MTP Question:

MTP June 2019

1. (a)Does silence amount to fraud? Explian with exception and types of silence amount of fraud .

(b) Differentiate between contract of indemnity and contract of guarantee.

Answer:

Explanation to Section 17 of the Indian Contract Act provides that 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 case are such that having regard to them, it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus. we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 and these are as under.

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

(a) Where there is change in circumstances- A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly, this must be communicated to other party otherwise it amount to fraud.

(b) When there is half-truth- Even when a person is not bound to disclose a fact, he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

2(b)

Sl No	Contract of Indemnity	Contract of guarantee
1	In this contract there are two parties – the indemnifies and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
2	The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety.
3	The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.
4	The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
5	The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
6	The contract is between the indemnifier and indemnified.	The contract is between the principal debtor-creditor; surety – creditor; principal debtor- surety.

MTP June 2019

2. Write short notes any three of the following :
Contingent contract

Answer:
Contingent contract Section 31 under the Indian Contract Act, 1872 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essential of contingent contract-

a) Uncertainty and futurity of the event to which it is related
b) Uncertain future event must be collateral to the contract

A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person. Section 32 of the Act provides that contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

MTP June 2019

3. (a) What are the position of Minor's agreement and effect thereof?

(b) Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr P promises to pay Rs 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that Specific day of December and Mr. Q filed a suit for recovery of Rs 5,000 from Mr. P .Can Mr. Q recover the amount under Indian Contract Act,1872?

Answer:
The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-initio.

2.The law of estoppels does not apply against a minor.It means a minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

3. Doctrine of Restitution does not apply against a minor. In India, the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void ab-initio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.

4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.

7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable

8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.

9. Where a minor and an adult jointly enter into an agreement with another person, the minor is not liable and the contract can be enforced against the major person.

(b) In this case Mr. P bet with Mr. Q on the possibility of having rain on a specific day of December. Section 30 provides that agreement by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Therefore, the agreement between Mr. P and Mr. Q is of wagering nature and hence void. Thus, despite of no rain on specific day of December, Mr. Q cannot recover the amount of Rs 5,000 from Mr. P for the reason of entering into an agreement of a wagering nature.

MTP June 2019

4. Write short notes any three of the following:

E contract

Answer:

Electronic contracts are paperless contracts and are in electronic form.It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts.E-contract also requires the basic elements of a contract. The following are ingredients of the E-contracts-

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall be an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance

MTP Dec 2018

5. Arun, Barun and Gautam jointly borrowed `500,000 from Prashant. The whole amount was repaid to Prashant by Barun. Decide in the light of the Indian Contract Act, 1872 whether:

(a) Barun can recover the contribution from Arun and Gautam,

(b) Legal representatives of Arun are liable in case of death of Arun,

(c) Barun can recover the contribution from the assets, in case Gautam becomes insolvent.

Answer:

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 by 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 promisees, 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 anyone 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 contracts). 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,

(a) Barun can recover the contribution from Arun and Gautam because Arun, Barun, Gautam are joint promisors.

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

(c) Barun‘ also can recover the contribution from Gautam‘s assets.

MTP Dec 2018

6. (i) What is an offer and what are the points to be taken into account for a valid offer?

(ii) Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?

Answer:

(i) The term proposal‘ is otherwise called as offer‘. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines proposal‘ or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer. The person making the proposal is called as offeror‘ or proposer‘ and the person the proposal is made is called as offeree.

The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;

- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.

(ii) In this case 'A' is liable to 'B' for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. 'B‘ acted on the instruction of 'A'. Hence A‘ should indemnify B‘ for such damages, costs and expenses.

MTP June 2018

7. (i) What do you understand by Quasi Contract?

(ii) What are the rights of a finder of goods under the Indian Contract Act, 1872?

Answer:

Sometimes the law implies a promise imposing obligations on one party and conferring the right in favor of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise. Such cases are not contracts but the court recognizes them as relations resembling those of contracts and enforces them as if they were contracts. Such is called as a quasi contract**.**

This type of contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly in the experience of another. It is obligation which the law creates in the absence of any agreement, when any person is in the possession of one persons money or its equivalent under such circumstances that in

equity and good conscience he ought not to retain it and which in justice and fairness belongs to another. It is the duty and not an agreement or intention which defines it.

In the Act the following type of quasi contracts are discussed-

- Section 68 – Claim for necessaries supplied to person incapable of contracting, or on his account - This section provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with 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;
- Section 69 – Reimbursement of persons paying money due by another, in payment of which he is interested – This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, entitled to be reimbursed by the other;
- Section 70 – Obligation of person enjoying benefit of non gratuitous act – This section provides where a person lawfully does anything for another person, or delivers anything to him, to intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;
- Section 71 – Responsibility of finder of goods – This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;
- Section 72 – Liability of person to whom money is paid or thing delivered by mistake or under Coercion – This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

(ii) A finder of goods has the following rights under the Indian Contract Act, 1872

(1) Right of lien: The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).

(2) Right to sue for reward: The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)

(3) Right of resale: The finder has a right to sell the goods in the following cases:
(a) where the goods found is in danger of perishing;
(b) where the owner cannot, with reasonable diligence, be found out;
(c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
(d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3 rd of its value.

MTP Jun 2018

8. (i) A leaves a cow in the custody of B to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement.

(ii) Z rents out his house situated at Delhi to W for a rent of `10,000 per month. A sum of 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.

Answer:

(i) Restoration of Goods

The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned.

Section 159 provides that the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 provides that it is the duty of the 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 for the purpose for which they were bailed has been accomplished.

Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In 'Dhian Singh Sobha Singh V. Union of India' – AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in that behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof.

Section 161 provides that if 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 163 provides that 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.

Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Hence in the given case A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

(ii) W is entitled to recover from Z the amount paid to the Municipal Corporation:

- ❖ Since there is a contract between W and Z, viz., quasi contract;
- ❖ Since Z is bound to make the payment of house tax to the Municipal Corporation;
- ❖ Since W is interested in such payment;
- ❖ Since W is not himself liable for such payment.

MTP Jun 2017

9. (i) How can a surety be discharged from his liability?

(ii) Z rents out his house situated at Delhi to W for a rent of `10,000 per month. A sum of ` 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for

sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.

Answer:

(A) (i) Discharge of a Surety

A. By revocation which may be by way of –
(i) Giving notice (Section 130): A specific guarantee cannot be revoked by the surety if the liability has already accrued. But continuing guarantee can be revoked by notice as to future transactions.

(ii) Death of surety (Section 131): Surety stands discharged for future transactions unless is contrary is not there in the contract. But deceased surety's estate cannot be liable for any transactions between the creditors and principal debtors after the death of the surety even if the creditor has no notice thereof.

(iii) Novation i.e. substitution of with a new contract for an old one.

B. By conduct of creditor –

(i) By Variance in terms of contract (Section 133)
Any variance, made without surety's consent, in the terms of the contract between the principal (debtor) and the creditor, discharges the surety as to transactions subsequent to the variance.

(ii) By release or discharge of principal debtor (Section 134)
The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

(iii) When creditor compounds with, gives time to, or agrees not to sue, principal debtor (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 not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

(iv) Discharge of Surety by Creditor's Act or Omission Imparting Surety's Eventual Remedy (Section139)
If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged**.**

C. By invalidation of contract:
(i) Guarantee Obtained by Misrepresentation Invalid (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 and thus discharge the surety to that extent.

(ii) Guarantee Obtained by Concealment Invalid (Section 143) — Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid and thus discharge the surety to that extent.

(iii) 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.

(iv) If there is failure of consideration between creditor and principal debtor

(ii) W is entitled to recover from Z the amount paid to the Municipal Corporation:
- ❖ Since there is a contract between W and Z, viz., quasi contract;
- ❖ Since Z is bound to make the payment of house tax to the Municipal Corporation;
- ❖ Since W is interested in such payment;
- ❖ Since W is not himself liable for such payment.

MTP Jun 2017

10. (i) List the documents that have to be submitted for incorporation of a company.
(ii) State the conditions for formation of an OPC.

Answer:

(i) Incorporation of company
Section 7 of the Companies Act, 2013 provides for the procedure to be followed for of a company. The promotor of the company shall submit the following documents to the registrar of companies, whose jurisdiction the registered office of the company is proposed to be situated for registration.

(a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
(b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company;

(c) An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that

(1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2) 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.

(3) 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;

(d) The address for correspondence till registered office is established;

(e) All particulars of every subscriber to the memorandum along with the proof of identity;

(f) The particulars of the persons mentioned in the articles as the first directors of the company;

(g) The consent to act as directors of company in such form as may be prescribed.

The memorandum of association and articles of association are the basic essential documents of the company.

(ii) Conditions for formation of an OPC
The following are the conditions in formation of an OPC:

• No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;

• Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;

• No minor shall become member or nominee of OPC or can hold share with beneficial interest;

• Such company cannot be incorporated or converted into Section 8 company;

• Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;

• No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond `50 lakh or its average annual turnover during the relevant period exceeds `2 crore rupees.

MTP Dec 2017

11. (i) Discuss the position of a minor, as per Indian Contract Act, 1872.
(ii) What are the rights of a finder of goods under the Indian Contract Act, 1872?

Answer:

(i) Position of a minor, as per Indian Contract Act, 1872.

The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-initio.

2. The law of estoppels does not apply against a minor. It means a minor can always his plead his minority despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

3. Doctrine of Restitution does not apply against a minor. In India the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void abinitio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.

4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.

7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable

8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.

9. Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

(ii) A finder of goods has the following rights under the Indian Contract Act, 1872

(1) Right of lien: The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).

(2) Right to sue for reward: The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)

(3) Right of resale: The finder has a right to sell the goods in the following cases:
(a) where the goods found is in danger of perishing;
(b) where the owner cannot, with reasonable diligence, be found out;
(c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
(d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3 rd of its value

MTP Dec 2017

12. Write a note on: Rights of an indemnity holder when sued

Answer:

Section 125 provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor -

• all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

• all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

• all the sums which he may have paid under the terms of any compromise of any suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is show that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability.

MTP June 2017

13. (i) F, B and G jointly borrowed `500,000 from W. The whole amount was repaid to W by B. Decide in the light of the Indian Contract Act, 1872 whether:

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 by 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 promisees, 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 anyone 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 promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). 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,

(a) B can recover the contribution from F and G because F, B, G are joint promisors.

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

(c) B‘ also can recover the contribution from G‘s assets.

MTP June 2017

14. (i) State the circumstances where under an agent is personally liable to a third party for the acts during the course of agency?

Answer:

Under the following circumstances an agent is personally liable.

i) When he represents that he has authority to act on behalf of his principal, but who does not actually posses such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.

ii) Where a contract is entered into by a person apparently in the character if agent, but in reality on his own account, he is not entitled to required performance of it.

iii) Where the contract expressly provides for the personal liability of the agent.

iv) When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.

v) Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.

vi) Where the agent works for a foreign principal. vii) Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).

viii) Where according to the usage of trade in certain kinds of business, agents are personally liable.

ix) Where his authority is coupled with interest, he can be sued only to the extent of his interest in the subject matter.

MTP June 2017

15. (i) What is an offer and what are the points to be taken into account for a valid offer?

(ii) Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?

Answer:

(i) The term proposal‘ is otherwise called as offer‘. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines proposal‘ or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence,

he is said to make a proposal or offer. The person making the proposal is called as _offeror‘ or proposer‘ and the person the proposal is made is called as offeree‘.

The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.
- An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.

(ii) In this case 'A' is liable to 'B' for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. 'B‘ acted on the instruction of 'A'. Hence A‘ should indemnify B‘ for such damages, costs and expenses.

Revisionary Question

Revisionary Dec 2018

16. (a) Ayush stands surety for „Binod' for any amount which „Chintu‟ may lend to 'Binod' from time to time during the next three months subject to a maximum amount of ` 1,00,000. One month later 'Ayush' revokes the surety, when 'Chintu‟ had already lent to „Binod' `10,000. Referring to the provisions of the Indian Contract Act,1872. Decide:

(i) Whether 'Ayush' is discharged from all the liabilities to 'Chintu' for any subsequent loan given to 'Binod'?

(ii) What would be your answer in case 'Binod' makes a default in paying back to 'Chintu' the already bo rrowed amount of `10,000?

Answer:

Revocation of continuing guarantee: The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.

(i) Thus applying the above provisions in the given case, Ayush is discharged from all the liabilities to Chintu for any subsequent loan.

(ii) Answer in the second case would differ i.e. Ayush is liable to Chintu for `10,000 on default of Binod since the loan was taken before the notice of revocation was given to Chintu.

(b) Mr. Sudarshan, is employed as a cashier on a monthly salary of `10,000 by fruity bank for a period of three years. Rajeev gave surety for Sudarshan‟s good conduct. After nine months, the financial position of the bank deteriorates. Then Sudarshan agrees to accept a lower salary of `5,000 per month from Bank. Two months later, it was found that Sudarshan has misappropriated cash since the time of his appointment. What is the liability of Rajeev? Decide your answer in reference to the provisions of the Contract Act, 1872?

Answer:

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 credit or without surety‘s consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

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

17. Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872?

Answer:

Contracts which need not to be performed: A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Indian Contract Act, 1872. These circumstances are:

1. Novation: Novation means substitution. Where a given contract is substituted by a new contract, it is novation. The old contract, on novation ceases. It need not be performed. Novation can take place with mutual consent. However, novation can take place by substitution of new contract between the same parties or between different parties. Novation results in discharge of old contract.

2. Rescission: In case of rescission, the old contract is cancelled and no new contract comes in its place. A contract is also discharged by rescission. Sometimes, parties may enter into an agreement to rescind the previous contract. Sometimes, the contract is rescinded by implication or by non- performance for a long time without each other complaining about it.

3. Alteration: Where the contract is altered, the original contract is rescinded. Hence, the old one need not be performed whereas the new one has to be performed. Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. While there can be very minor alterations, there cannot be unilateral material alteration to a contract. If it is done it will be void.

4. Remission means waiver: Section 63 of the Act deals with remission. It provides that ―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 it thinks fit. Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.

18. Mr. Kamal offered to sell his house to Mr. Vimal for 15,00,000. Mr. Vimal accepted the offer by post. On the very next day Mr. Vimal sent a telegram revoking the acceptance which reached Mr. Kamal before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. Kamal at the same time?

Answer:
Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions:

(i) Yes, the revocation of acceptance by Mr. Vimal (the acceptor) is valid.

(ii) If Mr. Kamal opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

19. Explain the meaning of „Quasi-Contracts‟. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872?

Answer:
Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as ―quasi-contracts‖ as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Circumstances identified as quasi-contracts:

1. Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person‘s property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

2. Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by **him to** protect his own interest**.**

3. Obligation of person enjoying benefits of non-gratuitous 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.

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

5. Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

20. Mr. Ahmed agrees to pay Mr. Doshi a sum of money if Mr. Doshi marries Ms. Priya. Ms. Priya however marries Mr. Farroque, who died subsequently. After the death of Mr. Farroque, Ms. Priya marries Mr. Doshi. Whether Mr. Ahmed is legally bound to pay the agreed sum of money to Mr. Doshi? Comment.

Answer:

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

In the instant case, future event on which the contract is contingent in the future conduct of a living person. Therefore the marriage of Mr. Doshi with Ms. Priya must be considered impossible at the time Ms. Priya marries Mr. Farroque. Although it is possible that Mr. Farroque dies and Ms. Priya afterwards marries Mr. Doshi. Therefore at that point of time of Ms. Priya's marriage with Mr. Farroque, the contract becomes void on the ground of impossibility of the future event taking place. In view of this Mr. Ahmed is not legally bound to pay the agreed sum to Mr. Doshi.

21. A patient in a lunatic asylum can also enter into a valid contract. State the position based on legal provision.

Answer:

A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind (Sec. 12 of Indian Contract Act.)

A patient in a lunatic asylum may a valid contract if he is of sound mind at intervals at the time of making the contract.

22. Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement.

Answer:

Restoration of Goods

The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned.

Section 159 provides that the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 provides that it is the duty of the 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 for the purpose for which they were bailed has been accomplished.

Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In _Dhian Singh Sobha Singh V. Union of India‘ – AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in that behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof.

Section 161 provides that if 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 163 provides that 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.

Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Hence in the given case Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Sushil is bound to deliver the calf as well as the cow to Rishi.

23. Mr. Bright instructs Ujjwal, a merchant, to buy a ship for him. Ujjwal employs a ship surveyor of good reputation to choose a ship for Mr. Bright. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bright holds Ujjwal responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Ujjwal is responsible to Mr. Bright?

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Ujjwal is not, but the surveyor is, responsible to Mr. Bright.

24. Write short notes on: Doctrine of privity of contract

Answer:

The doctrine of privity of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in MC Chacko v State Bank of Travancore. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract.

The Indian Contract Act, 1872 is silent about the right of a stranger to contract to sue or not to sue but the Privity Council extended the Principal of English Common law to India in its decision in Jamna Das V Ram Avtar Pandy which was affirmed by the Honourable Supreme Court of India in the case of MC Chako v State Bank of Travancore.

Accordingly in the following circumstances a stranger to contract can sue:

1. Beneficiaries under trust or charge

2. Marriage settlement, partition or other family arrangements
3. Acknowledgement or estoppel.

4. Agency

5. Assignee in case of insurance policy

25. Exceptions to „Risk Prima Facie passes with the property"

Answer:

The rule regarding risk passes with the property enshrined in section 26 is subject to the following exceptions:

(a) This rule of 26 will apply only if there is no agreement to the contrary. It is permissible for the parties to provide in the agreement that although the property does not pass, the risk passes and they may fix the point of time when it is to pass.

(b) Where delivery has been delayed through the fault of either party the buyer or the seller, the goods are at the risk of the party at fault as regards any loss which might not have been occurred but for such loss. The goods are at the risk of the party who is at fault in delay of delivery.

(c) If there is a custom in that particular trade that the risk does not pass with property, in such a case the risk will pass as per the custom.

(d) Risk and property may be separated by agreement between the parties. Section 40 of the Act also provides that where the seller agrees to deliver the goods at his own risk at a distant place from where they are, the buyer shall unless otherwise agreed, not take any risk of deterioration in the goods incidental to the transit.

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26. (a) Mr. Paul of his own promised to subscribe to Mahatma Gandhi Memorial Fund by 30.09.2017, but did not pay. Under the circumstances, he can be enforced – Comment.

Consideration is essential element of contract without which no promise can be enforced. Therefore a gratuitous promise to contribute to Mahatma Gandhi Memorial Fund cannot be enforced. However if the promisor knew the purpose and also knew that on the faith of such promise, certain obligations are incurred, the promisor would be bound by the promise.

(b) Mr. Dey writes a letter to Mr. Gupta to sell his plot of land for a certain sum of money on 11.12.2017. Mr. Gupta receives the letter on 14.12.2017. Acceptance was communicated by Mr. Gupta 16.12.2017. It reaches Mr. Dey on 20.12.2017. When is the communication of the offer and acceptance binding on the parties?

Answer:
Communication of offer
- Communication of offer completes on 14.12.17.
- Offer can be accepted by Mr. Gupta on or after 14.12.17

Communication of acceptance - Acceptance is communicated by Mr. Gupta on 16.12.17.

Effect of communication of acceptance:

(i) Binding on Mr. Dey - on 16.12.17 (i.e., Mr. Dey cannot withdraw his offer on or after 16.12.17).

(ii) Binding on Mr. Gupta - on 20.12.17 (i.e., Mr. Gupta may withdraw his acceptance before 20.12.17).

27. Mr. Shaw an industrialist has been fighting a long drawn litigation with Mr. Mishra another industrialist. To support his legal campaign Mr. Shaw enlists the services of Mr. Nandu a legal expert stating that an amount of ` 5 lakhs would be paid, if Mr. Nandu does not take up the brief of Mr. Mishra. Mr. Nandu agrees, but at the end of the litigation Mr. Shaw refuses to pay. Decide whether Mr. Nandu can recover the amount promised by Mr. Shaw under the provisions of the Indian Contract Act, 1872.

Answer:

The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void.

Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc., are void agreements.

Thus Mr. Nandu cannot recover the amount of ` 5 lakhs premised by Mr. Shaw because it is an illegal agreement and cannot be enforced by law.

28. Sanjay holds agricultural land in Bihar on a lease granted by Palash, the owner. The land revenue payable by Palash to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Sanjay's lease. Sanjay, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from Palash. Referring to the provisions of the Indian Contract Act, 1872 decide whether Palash is liable to make good to Sanjay, the amount so paid?

Answer:

Yes, Palash is bound to make good to Sanjay the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that "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 given case Sanjay has made the payment of lawful dues of Palash in which Sanjay had an interest. Therefore, Sanjay is entitled to get the reimbursement from Palash.

29. When is consideration said to be against public policy?

Answer:

A consideration would be considered to be against a public policy in the following cases:

1. Agreement for trading with enemy

2. Agreement interfering with personal liberty

3. Agreement interfering with parental duties

4. Agreement interfering with marital duties

5. Agreement interfering with course of justice

6. Agreement for improper promotion or litigation

7. Agreement for suppressing prosecution

8. Agreement to do an act against the duty of a person

9. Marriage brokerage agreement

10. Agreement not to bid

11. Agreement to create monopolies or reduce competition

12. Agreement for sale of public offices or titles.

30. State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal?

Answer:

The general rule states that:

(i) Only the principal can enforce and can be held liable on a contract entered into by an agent.

(ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

1. When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.

2. Where it is expressly provided in the contract that the agent shall be personally liable.

3. Where agent does not disclose the name/identity of the principal.

4. Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.

5. When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.

6. When the agent exceeds his authority or commits a breach of warranty of authority.

7. When he acts as a pretended agent

8. When he receives or pays money by mistake or fraud.

9. Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.

10. Where the usage of trade or custom makes an agent personally liable.

31. Kwality Ltd., contracts with Walls Traders to make and deliver certain machinery to them by 30.6.2014 for ` 11.50 lakhs. Due to labour strike, Kwality Ltd. could not manufacture and deliver the machinery to Walls Traders. Later, Walls Traders procured the machinery from another manufacturer for `12.75 lakhs. Walls Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with Kwality Ltd. And were compelled to pay compensation for breach of contract. Advise Walls Traders the amount of compensation which it can claim from Kwality Ltd., referring to the legal provisions of the Indian Contract Act

Answer:

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

Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

Applying the above principle of law to the given case, Kwality Ltd is liable to compensate for the loss of `1.25 lakhs (`12.75 less `11.50 i.e. `1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Walls Traders were compelled to make to Zenith Traders, it depends upon the fact whether Kwality Ltd knew about the contract of Walls Traders for supply of the contracted machinery to Zenith Traders on the specified date.

If he was aware than Kwality Ltd is also liable to reimburse the compensation which Walls Traders had to pay to Zenith Traders for breach of contract. Otherwise Kwality Ltd is not liable.

31. Comment on the following:

Piyu requests Sidhartha to sell and deliver her goods on credit. Sidhartha agrees to do so, provided Ajay will guarantees the payment of the price of the goods. Ajay promises to guarantee the payment in consideration of Sidhartha's promise to deliver the goods.

Answer:

All essentials of a valid contract must be present in the contract of guarantee [Sec 126]. Again Sec 127 states that, consideration received by the principal debtor is sufficient consideration to the surety for giving guarantee.

In the given case, there is a sufficient consideration for Ajay's promise. Therefore the guarantee is valid.

32. Sidhartha contracts with Piyu for a fixed price to construct a house for Piyu within a stipulated time. Piyu would supply the necessary materials to be used in the construction. Ajay guarantees Sidhartha's performance for the contract. Piyu does not supply the materials. Would Ajay be still liable?

Answer:

Ajay is discharged from the liability since the surety is discharged by any act or omission of the creditor, the legal consequences of which is the discharge of the principal debtor {sec 134].

In the given case, failure to supply necessary materials by Piyu (the creditor) amounts to an omission on the part of the creditor resulting in the discharge of Sidhartha (the principal debtor) and hence discharging Ajay (the surety).

33. Sidhartha guarantees Ajay against the misconduct of Piyu in an office to which Piyu is appointed by Ajay, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, Piyu misconducts himself.

Answer:

As per section 133, if subsequent to the formation of contract of guarantee, any variation is made in the terms and conditions of contract of guarantee and such variation is made without the consent of surety, then the surety shall be released for such transactions, which takes place after such variations.

Material alteration in duties of Piyu amounts to variation in terms and conditions of the guarantee. Although such variations are not due to an agreement between the principal debtor and creditor, yet the surety is discharged.

34. Write short notes on: Points of a valid offer

Answer:

The following points are to be taken into account for a valid offer

- The offer must be in clear, definite, complete and final terms.
- It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;

 Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

Workbook Question

35. State the essential elements of a valid contract as per Indian contract act.

Answer:

The following are the requirements for a valid contract-

- There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement;
- There shall be an intention to create legal relations or an intent to legal consequences;
- The agreement shall be supported by lawful consideration;
- The parties to the contract shall be capable of contract;
- There shall be genuine consent between the parties to the contract;
- The object and consideration of the contract shall be legal and the same shall not be opposed to public policy;
- The terms of the consent shall be certain;
- The agreement is capable of being performed i.e., it is not impossible of being performed.

36. What is an Offer? What are the points to be considered for a valid offer?

Answer.

The term „proposal" is otherwise called as „offer". An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines „proposal" or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer. The person making the proposal is called as „offeror" or proposer" and the person the proposal is made is called as „offeree". The offer must be a valid one. The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

37. What is Consideration? What are the different types of consideration? State the Legal Rules Regarding Consideration.

Answer:

Section 2(d) of the Act defines the term „consideration" which has been discussed in the early part of this material. Consideration is essential for every contract. The following are the fundamental principles for consideration-

- Consideration must be at the desire of the promisor;
- Consideration may move from the promise or any other person;

Types of consideration

Consideration may be of the following types-

- **Executory or future –** it means it makes the form of promise to be performed in the future; Example – A makes an engagement with B to marry her in future.
- **Executed or present –** it is an act or forbearance made or suffered for a promise.
- **Past –** it means a past act or forbearance, that is to say, an act constituting consideration took place and is complete before the promise is made.

Legal Rules Regarding Consideration:

1. It must move at the desire of the promisor
2. It may move from the promisee or any other person
3. Consideration must be something of value.
4. It may be an act, abstinence or forbearance or a return promise
5. It may be past, present or future which the promisor is already not bound to do.
6. It must not be unlawful.
7. Consideration need not be adequate
8. It must not be illusory
9. It must not be opposed to public policy
10. Pre-existing obligations

38. **Explain the general rule ex-nudopacto non oritur action —.**

Answer:

The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example; if A promises to pay B ` 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

1. Promise made on account of natural love and affection.
2. Promise to compensate for voluntary services.
3. Promise made to pay a time barred debt.

4. Gift actually made:

5. Creation of agency:

6. Charitable subscription

39. **Write short notes on – [a] stranger to contract / doctrine of privity of contract [b] Lapse of offer**

Answer:

stranger to contract / doctrine of privity of contract: The doctrine of privity of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in MC Chacko v State Bank of Travancore. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract.

The Indian Contract Act, 1872 is silent about the right of a stranger to contract to sue or not to sue but the Privity Council extended the Principal of English Common law to India in its decision in Jamna Das V Ram Avtar Pandy which was affirmed by the Honourable Supreme Court of India in the case of MC Chacko v State Bank of Travancore.

Accordingly in the following circumstances a stranger to contract can sue:

1. Beneficiaries under trust or charge

2. Marriage settlement, partition or other family arrangements

3. Acknowledgement or estoppel.

4. Agency

5. Assignee in case of insurance policy

[b] Lapse of offer

Section 6 provides for the method to revoke the offer. An offer may be lapsed if-

- it is not accepted within the specified time or after a reasonable time;
- it is not accepted in the mode prescribed; if no mode is prescribed in some usual and reasonable manner;
- the offeree rejects it by distinct refusal to accept it;
- either the offeror or the offeree dies before its acceptance;
- the acceptor fails to fulfill a condition precedent to an acceptance;
- the offeree makes a counter offer, it amounts to rejection of the offer and an offer by the offeree may be accepted or rejected by the offeror.

40. What do you mean by —E-contract‖? State its ingredients and features.

Answer:

Electronic contracts are paperless contract. It is in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a

software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract.

The following are ingredients of the e-contracts-

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance.

The main feature of this type of contract is speed, accurate and reliable. The parties to the contract have to obtain digital signature from the competent authority and they have to affix the digital signature instead of manual signing. The Information Technology Act, 2000 regulates such e-contracts. In this type of contract the web site of the offeror acts as a display to the world at large. E-mails are used to negotiate and agree on contract terms and to send and agree to the final contract. An email contract is enforceable if the requirements of the contract are fulfilled. Electronically signed contracts cannot be denied because they are in electronic form and delivered electronically.

41. What is bilateral mistake? State the different types of bilateral mistake.

Answer:

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation: An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact. In order to render a contract void due to bilateral mistake the following two conditions must be met.

(a) Mistake must be mutual: Both the parties must misunderstand each other and should be at cross purpose.

(b) Mistake must relate to a matter of fact essential to the agreement: What is essential fact of an agreement depends upon the nature of promise in each case.

The various types of mistakes falling under bilateral mistakes are as under:

(i) Mistake as to subject matter covers following cases:

(a) Mistake as to existence of subject matter: If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.

(b) Mistake as to identity of subject matter: It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.

(c) Mistake as to the quality of the subject matter: If the subject matter is something essentially different from what the parties thought to be, the agreement is void.

(d) Mistake as to quantity of subject matter: Bilateral mistake as to quantity of subject matter would render the contract void.

(e) Mistake as to title of subject matter: The agreement is void due to bilateral mistake as to title of the subject matter.

(f) Mistake as to price of the subject matter: Mutual mistake as to price of the subject matter would render the agreement void.

(ii) Mistake as to possibility of performance of Contract Impossibility may be:

(a) Physical impossibility: A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.

(b) Legal impossibility: A contract is void if it provides that something shall be done which as a matter of law cannot be done.

42. What is a Sound Mind for the Purposes of Contracting? Give example.

Answer:

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests [Section12].

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Examples:

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.

(i) He/she is capable of understanding the contract.

(ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.

A person not satisfying any of these two conditions is not treated as a person of sound mind.

43. What is Fraud? Does silence amount to fraud? Elucidate the Effect of Fraud.

Answer:

As per section 17 of the Contract Act: "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 intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

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

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

(iii) A promise made without any intention of performing it;

(iv) Any other act fitted to deceive;

(v) Any such act or omission as the law specially declares to be fraudulent.

Explanation: 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.

Does silence amount to fraud?

At times one of the parties to a contract makes silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors? Explanation to section 17 of the Indian Contract Act provides that 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 case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech. Thus we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 as under which we have already discussed above.

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

(a) Where there is change in circumstances- A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.

(b) When there is half-truth- Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

Effect of Fraud: According to section 19 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 a 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.

However there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 19 the contact, nevertheless, is not voidable, if the party whose consent was so caused had the means to discovering the truth with ordinary diligence.

44. What is a quasi contract? What are the different types of quasi contract?

Answer:

Sometimes the law implies a promise imposing obligations on one party and conferring the right in favor of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise. Such cases are not contracts but the court recognizes them as relations resembling those of contracts and enforces them as if they were contracts. Such is called as a quasi contract.

This type of contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly in the experience of another. It is obligation which the law creates in the absence of any agreement, when any person is in the possession of one persons money or its equivalent under such circumstances that in equity and good conscience he

ought not to retain it and which in justice and fairness belongs to another. It is the duty and not an agreement or intention which defines it.

In the Act the following type of quasi contracts are discussed-

• Section 68 – **Claim for necessaries supplied to person incapable of contracting, or on his account -** This section provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with 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;

• Section 69 – **Reimbursement of persons paying money due by another, in payment of which he is interested –** This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, entitled to be reimbursed by the other;

• Section 70 – **Obligation of person enjoying benefit of non gratuitous act –** This section provides where a person lawfully does anything for another person, or delivers anything to him, to intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;

• Section 71 – **Responsibility of finder of goods –** This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;

• Section 72 – **Liability of person to whom money is paid or thing delivered by mistake or under coercion –** This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

45. Explain the concept of Contract of Guarantee

Answer:

Section 126 defines the expression „the contract of guarantee" as a contract to perform the promise, or discharge the liability of a third person in case of his default. The components of this contract consist of-

• Surety – the person who gives the guarantee is called as the „surety";

• Principal debtor – the person in respect of whose default the guarantee is given is called the „principal debtor";

• Creditor – the person to whom the guarantee is given is called the „creditor". A guarantee may be either oral or written. It is a tripartite agreement which contemplates the principal debtor, the creditor and the surety.

46. Explain the Difference between Indemnity and Guarantee

Answer:

The contract of indemnity is differing from the contract of guarantee in the aspects shown in the following table:

Sl. No.	Contract of Indemnity	Contract of guarantee
1	In this contract there are two parties – the indemnified and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
2	The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety.
3	The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtors.
4	The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
5	The indemnifier cannot sue the third party in his own unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
6	The contract is between the indemnifier and indemnified.	The contract is between the principal debtor-creditor; surety – creditor; principal debtor- surety.

47. What is discharge of contracts? What are the various modes of discharge of contracts?

Answer:

When the rights and obligations created by a contract comes to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

Modes of discharge of contracts:

The following are the various modes or methods by which a contract is discharged.

1. Discharge by performance
2. Discharge by agreement
3. Discharge by lapse of time
4. Discharge by operation of law
5. Discharge by impossibility of performance
6. Discharge by breach of contract

48. What is pledge? Distinguish between pledge and bailment.

Answer:

Pledge: Section 172 of the Act provides that the bailment of goods as security for payment of a debt or performance of a promise is called „pledge". The pledge constitutes-

- Pawner – The bailor in this case is called as pawner;
- Pawnee – the bailee in this is case as pawnee

A pledge is a bailment of moveable property by way of security. The concept of pledge under this Act is dealt with Sections 172 to 179. In Maharastra State Co-operative Bank Limited V. Assistant Provident Fund Commissioner – (2009) 10 SCC 123 it was held that in a pledge the pledge is in possession of and has a special property in the goods which he is entitled to detain to secure repayment. Unlike a mortgage, a pledge does not have the effect of transferring any interest in the property in favor of the pledge. Delivery of goods is necessary to complete a pledge.

Difference between pledge and bailment

Section 172 of the Act define s a pledge to be the bailment of goods as security for payment of debt or performance of a promise whereas Section 148 provides that a bailment is the delivery of goods by one person to another person 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 persons delivering them.

49. Elucidate the Rights of principal with suitable example.

Answer:

The rights of principal are described in Sections 215 and 216. Section 215 provides that if an agent deals on his own account in the business of the agency, without first obtaining the consent of the principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the Principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Example –

(a) A directs B to sell A‟s estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material act, or that the sale has been disadvantageous to him;

(b) A directs B, to sell A‟s estate. B on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate of adopt the sale at his option.

• Section 216 provides that if an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Example – A direct B, his agent, to buy a certain house for him. B tells A that it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Suggested Question

Suggested Dec 2018

50. Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872.

Answer:
Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as – quasi contracts as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Circumstances identified as quasi-contracts:

1. Sec-68--Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person’s property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

2. Sec-69-Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

3. Sec-70-Obligation of person enjoying benefits of non-gratuitous 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.

4. Sec-71-Responsibility of finder of goods: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. Sec-72- Liability for money paid or thing delivered by mistake or by coercion: 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 contractual liability arises without any agreement between the parties.

51. C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed

Answer:
Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries. But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.

(ii) Where the wife is given sufficient money for purchasing necessaries.

(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts

(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).
Applying the above conditions in the given case 'B' will succeed. He can recover the said amount from 'A' if sarees purchased by 'C' are necessaries for her.

52. Write short notes on any three of the following terms: E-Contracts

Answer:
E-Contracts: E-contracts are paperless contracts. It is in electronic form. They are conceptually very similar to traditional contracts. E-contract also require basis of contract. The following are ingredients of the e-contracts –
An offer is to be made;
Offer is to be accepted;
There shall be a lawful consideration;
There shall an intention to create legal relations;
The parties must be competent to contract;
There must be free and genuine consent;
The object of the contract must be lawful;
The main feature of this type of contract is speed, accuracy and reliability. The parties to the contract have to obtain digital certificate from competent authority. The Information Technology Act, 2000 regulates such contracts. Contract is signed through E-Mail is valid & enforceable.

Scanner Question:

53. Write explanatory notes on: 2008 - Dec

(i) Time is the essence of contract; (4 marks)
(ii) Misrepresentation. (4 marks)

Answer:
(i) The time is an essence of contract according to Section 55 of the Indian Contract Act, 1872 which provides that:
When time is of essence : If the promisor fails to perform his obligation within the time limit set in the contract, the contract becomes voidable at the option of the promisee. The promisee can decide whether to continue with the contract or to discontinue it. If he decides to continue with the contract in spite of delay, he will not have any claim on compensation for the delay. But if he decides to continue with claims for damages for delay in performance, he should give a notice in this regard to the promisor at the time of giving his acceptance for continuance of the contract

(ii) Misrepresentation : (Section 18 of the Indian Contract Act, 1872) Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Misrepresentation may be either innocent or without reasonable ground. Misrepresentation means and includes:

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

2. Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;

3. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

54. Write explanatory note on : 2009 - June
Effects of 'coercion' on a contract. (4 marks)

Answer:

Coercion (compulsion, force)	Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.
Following are the effects of coercion	(i) The aggrieved party whose consent was obtained by coercion may cancel the contract or may continue with the contract at its option. Worded differently Contract induced (to induce means to make, to bring, to persuade, to convince) by coercion is voidable at the option of aggrieved party whose consent was obtained by coercion. (Section 19)
	(ii) The aggrieved party can change or cancel the consent given by it under coercion and may continue with the contract. (iii) If the aggrieved party decides to cancel the contract, it can claim for compensation for any damage or loss suffered because the contract was not fulfilled. (iv) If the aggrieved party decides to rescind (means to cancel) the contract, it will have to return all the benefits received by it from such contract. (Section 64) (v) The aggrieved party can insist that contract be performed.

55. Write short note on: 2010 - June
Undue influence **(4 marks)**

Answer:
Undue Influence:

• When two parties enter into oontract with each other and one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other party, such contract is said to be induced by 'undue influence'.

• If a person having a dominant position over another person and he enters into contract with such person then the burden of proof that the contract was not done under undue influence, is on the person holding the dominant position.
A person is said to be having a dominant position if.

(i) He makes contract with a person who is not of sound mind because of age, illness, mental instability or bodily distress etc.

(ii) He holds some control over the other person

(iii) He holds some monetary obligation over the other person.

56. Write short note on: 2010 - Dec
Effects of 'coercion' on a contract. **(4 marks)**

Answer:
Please refer 2009 - June [4] (a) (i) on page no. 32

57. Write short note on: 2012 - June
Counter Offer; (4 **marks)**

Answer:
Counter offer is a new offer which is made in response to offer made earlier. Suppose A offers to sell his house to B for INR 10.0 lacs and B offers to buy it in say 9.0 lacs, the offer of B would be called Counter offer. In general the terms and conditions of Offer are same for Counter Offer as well.

58. Write short notes, 2012 - Dec
Lawful consideration **(4 marks)**

Answer:

Lawful consideration	The consideration or object of an agreement is lawful unless: (a) It is forbidden by law; or (b) Is of such a nature that if permitted, it would defeat the provisions of any Law or any rule for the time being in force in India ; or (c) Is Fraudulent; or (d) It involves or implies injury to the person or property of another; or (e) The Court regards it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

59. Write short note on the following: 2017- June
E-Contracts **(5 marks)**

Answer:
E-Contracts
Electronic contracts are paperless contract. It is in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract. The following are ingredients of the e-Contracts:
• An offer is to be made;

• Offer is to be accepted;

• There shall be a lawful consideration;

• There shall an intention to create legal relations;

• The parties must be competent to contract;

• There must be free and genuine consent;

• The object ol the contract must be lawful;

• There must be certainty and possibility of performance.

60. Write short note on out of the following term: 2018- June
Undue Influence (5 marks)

Answer:
Please refer 2010 - June [3] (a) (i) on page no. 33

61. Write short notes on: 2018 - Dec
E-Contracts (5 marks)

Answer:
Pleaser refer 2017 - June [8] (a) on page no. 35

62. An agreement with insufficiency of consideration is void ab initio; 2008- Dec
(2 marks)

Answer:
False : It is neither void nor voidable agreement. The consideration should be of some value in the eyes of law. Even the smallest consideration is sufficient provided it has some value. The law simply provides that a contract should be supported with consideration subject to certain exceptions.

63. Comment on the following statements based on legal provisions: 2008- Dec
(i) Every person is competent to contract. (2 marks)
(ii) 'A' saved life of 'B', Later 'A[1] demanded remuneration from 'B' for saving him since saving of life was valid consideration, 'A' would succeed. (2 marks)

Answer:
(i) Section 11 of the Contract Act reads "Every person is competent to contract who attains 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."

(ii) Consideration should be at the desire of promisor. 'A[1] cannot demand payment for his service to save 'B's life because (1) it was voluntary gratuitous act and '(2) not at the desire of 'B'.
Where, however, a 'Person' lawfully does anything for "another person" not intending to do so gratuitously and such other person enjoys the benefit thereof, the "another person" is bound to make compensation to the "person" in respect of the thing so done.

64. What is fraud under Indian Contract Act. 1872? 2009- June

(2 marks)

Answer:
As per Section 17 of Indian Contract Act, Fraud means and includes any of the following acts committed by a party to contract or with his connivance (means support or responsibility), or by his agent with intent to deceive another party there to or his agent or to induce him to enter into a contract.

1. The suggestion as a fact, or that which is not true by one who does not believe it to be true.

2. 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.

65. A minor can be appointed as agent. 2009 - June

(2 marks)

Answer:
False : Any person may become an agent between the principal and third party. An agent is supposed to be responsible to the principal hence no person who is not major and of sound mind can become an agent.

66. In a contract with employer an employee agrees not to institute any legal proceeding against his employer. Can the agreement be enforced by the employer? 2009- Dec

(2 marks)

Answer:
The employer will not be in position to enforce the contract because an agreement restricting the right of legal proceedings is null and *void ab-initio* as per Section 28 of Indian Contract Act.

67. 2010**- June**
A contract without adequate consideration is not a contract-offer your views. **(2 marks)**

Answer:
• It is nowhere laid down that/consideration should be adequate to the promise.

• Adequacy is for the parties to decide at the time of making the agreement.

• Inadequacy of consideration is no ground for refusing the performance of the promise, unless it is evidence of fraud.

• The consideration should be of some value in the eyes of law.

• Even the smallest consideration is sufficient provided it has some value.

• If' a person gets what was promised to him at the time of making contract, the Court will not inquire whether it was equivalent to the promise which he gave in return.

• Where one party alleges that his consent was not free while determining consideration, the Court will take the inadequacy of consideration as evidence in support of allegation.

68. 2010- Dec

(i) A counter offer constitutes an acceptance of an offer. **(2 marks)**

(ii) Death or insanity of the proposer automatically revokes the proposal. **(2 marks)**

Answer:
(i) Wrong. A counter offer is distinct and different from the original offer. Original offer must be accepted unconditionally and without any modification. Hence, a counter offer is not deemed as acceptance of original offer.

(ii) No. The revocation of offer takes place only when the acceptor comes to know about the death of person making the offer. If the acceptor accepts the offer and then he comes to know that person making the offer is dead, his acceptance would be valid acceptance in the eyes of law.

69. 2010- Dec
Performance of a contract may be made only by the parties to the contract - Comment. **(2 marks)**

Answer:
The statement is partly true. The contract can be performed by the promisor or any of his representative or agent. When some expertise is necessary and that expertise is with the contractor, the contract must be performed by him only.

70. 2011 - June
What is 'fraud'? **(4 marks)**

Answer:
Please refer 2009 - June [3] (i) on page no. 37

71. 2011**- June**
All consideration or objects of an agreement are not lawful-justify. (2 **marks)**

Answer:
The consideration of an agreement is treated as lawful, unless :
1. It is forbidden by law;

2. It is of such nature that if permitted it would defeat the provisions of any law;

3. It is fraudulent;

4. It involves injuries to the person or property of another;

5. It is regarded as immoral, or opposed to public policy.

72. 2011- Dec
A minor can neither undertake liabilities nor receive benefit under the contract.- Comment. **(2 marks)**

Answer:
Although a minor cannot be a party to a contract, but he can receive all the benefits from any contract. He can be beneficiary of any contract.

73. 2011- Dec
An illegal agreement is void but void agreement is not necessarily illegal. - Explain. **(3 marks)**

Answer:
Illegal agreements are those agreements which are against the law. All illegal agreements are against the law and hence they all are invalid and void.
A void agreement may not be against the law hence it may be valid. An' agreement with uncertain parameters is void but is not illegal.
When an agreement is illegal, all agreements,, made on the basis of illegal agreement, are also illegal and void. If the basic agreement is void but not illegal, further agreements made on the basis of this agreement, may be valid.

74. 2011 - Dec

"Void Agreement" and "Void Contract" are same. Offer your views based on Rule Provision. (4 marks)

Answer:

Void agreement and void contract are not the same. The points of difference are as follows:

Void Agreement	Void Contract
1. It is void in the beginning.	1. It is valid in the beginning.
2. It remains void throughout its life.	2. It becomes void due to circumstances.
3. It is not enforceable by law from the very beginning.	3. It is enforceable by law at the beginning but becomes unenforceable due to certain reasons.

A contract becomes void due to

(i) impossibility of performance

(ii) change *o*\ law or

(iii) due to any other reason. A promised B to marry. Later B died. A valid contract becomes void due to death of B.

75. 2012 **- June**

Remaining silent with respect to the known defects is fraudulent. (2 marks)

Answer:

The statement is false. Silence is not fraud. Silence may be treated as fraud jf it leads to breach of trust between the two parties.

Space to wrife important points for revision

76. 2012 - June

State the essentials of a valid contract. (5 marks)

Answer:

Legal relationship is imperative (means important, basic, essential) component of agreement. There are certain conditions and ingredients which make an agreement enforceable by law and make this a valid contract as per the Law of Contract. These elements are described below

1.	Offer and Parties entering into agreement must have acceptance lawful offer and lawful acceptance. Mere mental acceptance is no acceptance.	
2.	Intention to create legal relationships	There must be intention of the parties concerned towards making agreement and the agreement should result in legal relationship. An agreement to play cards or to go to picnic does not create legal relationship among the parties and hence not enforceable in law.
3.	Lawful consideration	Subject to certain exceptions, there must be lawful considerations by one party to the other party in a contract. An agreement to do something for nothing is not enforceable in law. The something given or obtained is termed as consideration which must be lawful i.e. it should not be fraudulent, forbidden by law, or against the public interest.
4.	Capacity of the parties	The parties entering into agreement must be capable of doing so. For example, a minor, lunatic, drunk, or idiot is not supposed to have the capacity to constitute a contract.
5.	Free consent	The consent of both the parties must be free. An agreement executed by coercion, undue influence, mistake, threat, misunderstanding, misrepresentation, or fraud is invalid.
6.	Legality of object	Illegal object makes the contract illegal as well. The purpose or objective of the agreement must be lawful i.e. it should

		not be fraudulent, forbidden by law, or against the public interest.
7.	Certainty	The agreement must be certain and not vague or ambiguous.
8.	Possibility of performance	Performance promised must be possible and feasible. Promise to do the impossible is not enforceable by law.
9-	Void agreements	Agreements (i) in restraint of marriage of any person other than a minor, (ii) in restraint of trade (iii) in restraint of legal proceedings (iv) having uncertain meanings, (v) wagering, gambling, betting, are void and not enforceable in law.
10.	Writing, registration and legal formalities	In certain cases such as gift, lease, sale or mortgage of immovable property, a written contract is essential.

77. 2012 **- Dec**

A deceit which does not deceive is not fraud. Comment. (2 marks)

Answer:

Fraud should actually exist for taking action against it. If no one is deceived, there is no case of fraud. An attempt to fraud is not a fraud unless the party is actually deceived.

78. 2012- Dec

While discussing, Rajib told his friends that Contracts need not be performed under certain circumstances. Deepak objected to it. State the correct position. (4 marks)

Answer:

Yes, it is possible. Section 62 to 67 of the Contract Act are listed under the heading "Contracts which need not be performed". The relevant provisions are as follows:

(i) If by mutual agreement there is Novation, Rescission or Alteration, the original contract need not be performed (Sec. 62).

(ii) Where the promisee waives or remits the performance of promise made to him, wholly or in part or extends the time of performance or accepts any other satisfaction for it (Sec. 63).

(iii) When a voidable contract is rescinded, the other party need not to perform his promise (Sec. 64).

(iv) If the promisee neglects or refuses to afford the promisor reasonable facilities of the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby (Sec. 67).
Under the Law of Contract, the following agreements need not be performed.

(i) Unlawful consideration and object - Sec. 23.

(ii) Where the performance is unlawful or illegal - Sec. 56.

(iii) When performance become impossible. Spaoe to write important points for revision

79. 2013**- June**

A patient in a lunatic asylum can also enter into a valid contract. State the position based on legal provision. (2 **marks)**

Answer:

A person having a sound mind can enter into a valid contract. If a person is usually of unsound mind, who is at intervals of sound mind, may contract during those intervals when he is of sound mind.

80. 2013 - Dec
Does silence amount to fraud? (3 marks)

Answer:
• When a party to contract maintains silence over some of the facts relating to contract, such silence may or may not amount to fraud depending upon the circumstances and facts of each case.

• Explanation to Section 17 of the Indian Contract Act, 1872, provides that mere silence as to facts likely to affect the willingness of a person to enter into a contraot is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

• When the circumstances of contract are such that a person should speak and he does not speak but keeps silence then such silence will be treated as fraud.
Exceptions to the General Rule:
The general rule that silence does not amount to fraud has the following exceptions:

(In the following cases silence will amount to fraud)

(i) When the parties stand in fiduciary relationship (i.e., relationship of faith and trust, parent and child, etc.)
(ii) Where silence is equivalent to speech. [v]

(iii) Half Truth - It is worse than a blatant lie. Partial truthful disclosures may easily deceive the other party.

81. 2014 **- June**
X buys from Y a painting which both believe to be work of an old masterpiece and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract. (2 marks)

Answer:
The Contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per Section 20 of the **Indian Contract Act, 1872.**

82. 2016 **- June**
What are essential elements of a valid acceptance? (8 marks)
Answer:

(a)	Acceptance must be absolute and unqualified; it must conform to the offer	As per Section 7 in order to convert a proposal into a promise, the acceptance must: 1. Be absolute and unqualified: If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract. An invitation with variation is no acceptance, it is simply a counter proposal, which must be accepted by the original proposer before any contract is made. 2. Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be
		accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance. *In SurenderNath Vs Kedar Nath AIR 1936* *Cal 87* the Calcutta High Court held that where an offeror requires that the acceptance should be sent to a particular person in writing, Section 7 was not violated .when the offeree instead of writing to the particular person, sent his agent in person to communicate the acceptance.
(b)	Specific offer can be accepted by the person to whom it is made	Whereas general offer can be accepted by anyone competent to contract and meeting the conditions of offer. It was held in *Boulton Vs Jones (1857)27 LJ ex 117 case* that a specific offer can be accepted only by the person to whom it is made. A general offer can be accepted by any one as held in case of *Carlill Vs Carbolic Smoke ball Co, Harbans Lai* Vs *Harbanslal,* already discussed earlier

		in this study note.
(c)	Acceptance may be express or implied	As per Section 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. It can be inferred from the conduct of the parties. When a person boards in Metro Rail it is an implied acceptance.
(d)	Acceptance should be of the whole proposal and not in part	Acceptor should accept the whole proposal in total and not in parts. Part acceptance is no acceptance binding upon the proposer.
(e)	Acceptance should be according to the mode prescribed or usual and reasonable mode	Acceptor cannot accept the proposal in a manner different from the manner prescribed in the offer. If no such mode is prescribed it should be usual and reasonable mode. Silence cannot be a mode of acceptance. In *Surender Nath* V's *KedarNath, AIR 1936 cal 87, the Calcutta High* Court held that where an offeror requires that the acceptance should be sent in writing to a particular person, Section 7 of the contract act is not violated when the offeree instead of writing to particular person, sent his agent in person to communicate the acceptance.
(f)	Communication of acceptance is must	A mental determination to accept unaccompanied by any external indication will not be sufficient acceptance. To constitute an acceptance such acceptance must be communicated to the offeror or his authorized agent.
(g)	Acceptance must be given before its lapse «	Acceptance must be given before the offer apses by expiry of time fixed or by expiry of reasonable time if no time is so fixed or before it is withdrawn or revoked by the offeror. *In Ramasgate Victoria Hotel co. Vs. Montefoire (1866)LR 1 Exch 109* it was held that a person who applied for shares in a company in June was not - bound by any allotment made in November.

83. 2017 **- June**

Does silence amount to fraud? Explain with exceptions and types of silence amount to fraud. (9 marks)

Answer:

Fraud: [Sec. 17] —Explanation to Section 17 of the Indian Contract Act provides that 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 case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech. Thus we can say that there is exception to the rule that mere silence does not amount to fraud. These two exceptions are provided in explanation to Section 17 as under which we have already discussed above.

(i) When there is a duty to speak.

(ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

(a) Where there is change in circumstances: A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.

(b) When there is half-truth: Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

84. 2017 - Dec

What are the position of Minor's agreement and effect thereof? (10 marks)

Answer:

The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-inifio.

2. The law of estoppels does not apply against a minor. It means a minor can always plead his minority despite earlier, misrepresenting to bb a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

3. Doctrine of Restitution does not apply against a minor. In India the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy
' Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void *ab-initio.* Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.

4. No Ratification on.Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

5. Contract beneficial to Minor - A minor is entitled tq ¯ enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.

7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.

8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.

9. Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

85. 2008- Dec

(i) Mr. X offers to sell his Maruti car to Mr. Y for an intended sum of ` 90,000/- but by mistake he makes an offer in writing for ` 70,000/- instead of ` 90,000. Mr. X can plead mistake as defence. (2 marks)

(ii) Mr. X delivered 1000 mt. steel pipes to Mr. Y. 100 mt. were not as per specification, hence Mr. Y refused to accept and informed Mr. X to take back at his cost and risk. Mr. X rejected Mr. Y's request and demanded to return to Mr. X freight paid. State the correct position. (2 marks)

Answer:

(i) As the offer is accepted, he cannot plead defence. He has offered ` 70,000 and the offer was accepted. According to Sec. 22 of Contract Act, a contract is not voidable merely because it was caused by one of the parties under a mistake as to a fact mentioned in the agreement.

(ii) The buyer is required to inform the seller regarding inferior quality of goods within reasonable time. Unless otherwise stated in the agreement, the buyer is not bound to return goods to seller, it is duty of the seller to lift the poor quality goods at his own cost and risk.

86. 2008- Dec

(i) Mr. Ramesh promised to pay ` 10,000/- on 30.10.08 jointly to Mr. Bhabesh and Mr. Naresh for some consideration. Mr. Bhabesh died on 1.9.08. On 30.10.08 Mr. Naresh demanded payment of whole amount of ` 10,000/-. Whether Mr. Naresh is justified? (2 marks)

(ii) Mr. Ramesh direct his agent to sell his Maruti car. Agent buys the car for himself but in the name of his friend at *t* 50,000/- against market price of ` 70,000/- without the consent of Mr. Ramesh. What action Mr. Ramesh can take ? (2 marks)

Answer:

(i) No, Naresh is not justified. The nature of promise made by Ramesh to pay ` 10,000 jointly to Bhabesh and Naresh does not undergo any change after the expiry of Bhabesh as Bhabesh's representative or legal heir will take his place.

Thus Naresh has no right to claim the whole amount and payment of ` 10,000 will be jointly paid to Naresh and legal ' heirs of Bhabesh.

(ii) The principal has all the rights to reject and repudiate the actions of agent if the agent deals on his own account without the knowledge of the principal. In this case, the action of agent has been detrimental to the interests of principal and he should repudiate the action taken by the agent.

87. 2009- June
Mr. B (a broker) by the orders of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues Mr. B who informs Mr. A but Mr. A repudiates the contract. Although Mr. B defends but failed. Mr. B has to p&y cost, damages and incurs expense. Can B recover any amount from A. (2 marks)

Answer:
In this case "A" is liable to "B" for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authorities conferred upon him. B acted on the instruction of A which makes A liable to take responsibility of all lawful acts done by B on his behalf.

88. 2009- Dec
(i) '3' offered to sell his car to 'A' for ` 75,000. 'A' accepts to purchase at ` 74,950. 'B' refuses. Subsequently 'A' agrees to purchase at ` 75,000 but 'B' refused. 'A' sued 'B' for specific performance of the contract. State legal position. (2 marks)

(ii) Mr. A approached Union Bank for loan of 1,00,000 which was not available from others due to tight money market. Bank agreed but at a high rate of interest. Mr. A accepted. Can he repudiate on the ground of undue influence? (2 marks)

Answer:
(i) No, A cannot sue B for specific performance of contract. B's initial offer is already rejected by A and there is no offer available for acceptance subsequently.

(ii) A agreed to the terms and conditions of the loan on his own and his consent was free, and there was no pressure or undue influence from the bank. Bank has not forced its terms on A. A can not deny the terms and conditions subsequently. Undue Influence: When two parties enter into contract with each other and one of the parties is in position to dominate the will of the other and uses that position to obtain an unfair advantage over the other party, such contract is said to be induced by 'undue influence.'

89. 2009 - Dec
(i) On 30.11.09 Mr. Sham agrees to sell a painting to Mr. Ram4or ` 5,000/- but Mr. Sham died on 8.12.09. Mr. Sham's son claimed ` 10,00G/-. Can Mr. Ram obtain the painting at ` 5,000/-which was agreed to by Mr. Sham? (2 marks)
(ii) Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relying on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram? (2 marks)

Answer:
(i) The validity period of contract is not mentioned in the question. If Sham dies after the validity of contract period, no question of painting to Mr. Ram because the contract was already over during Sham's life time. Assuming that the contract was alive at the time of death of Sham, Mr. Ram can force the legal heirs of Sham to respect the contract and sell the painting at ` 5,000 as agreed to by Mr. Sham.
(ii) Mr. Ram can file suit against Mr. Sham for misinformation, fraud and cheating. He can obtain mortgage free estate from Mr. Sham. It is also questionable how could original registry be available with Mr. Sham because the authority keeps the original registry with him at the time of mortgage. Mr. Ram should have taken due care and diligence before relying on Sham's statement.

90. 2010- June

Mr. Roy sells by auction, to Mr. Paul a cow which Mr. Roy knows to be unsound. Mr. Roy says nothing to Mr. Paul about the cow's unsoundness. This is a clear case of fraud by Mr. Roy. (2 marks)

Answer:

Mere silence over a fact does not amount to fraud as per the Indian Contract Act. Mr. Paul has all the opportunities to examine the cow. Mr. Roy is not supposed to bring to light the unsoundness of cow.

91. 2010- June

Mr. 'A' agrees that Mr. A shall sell Mr. B a house for ` 1,00,000 but if Mr. B uses the house for 'Gambling House' then Mr. B shall pay ` 1,50,000 for the same. Explain the legality. (2 **marks)**

Answer:

The contract is valid if the purpose is lawful and is void if the purpose is unlawful. First part is a valid contract while the second part is void as using the house as 'gambling house' is unlawful. Consideration does not matter in deciding the lawfulness of the purpose.

92. 2010- **June**

A saved life of 'B', when 'B' was drowning. Later 'A' sued 'B' for remuneration/reward because saving life was the consideration received by 'B'. State based on Rules whether 'A' would succeed? (2 marks)

Answer:

There was no contract or agreement between A and B in this respect. As there was no contract at the first place, the question of any consideration does not arise whatsoever. It was a voluntary act on part of A, hence, A will not succeed.

93. 2010 - Dec

Mr. X buys a ring from Mr. Y at a low price employing 'undue influence' and sells the ring to Mr. Z who purchased against consideration and without knowing of Mr. X's 'undue influence'. Can Mr. Y recover the ring-from Z? (2 marks)

Answer:

No, Y cannot get the ring from Z. Mr: Z paid the amount to Mr. X in good faith. However, Mr. Y can file a suit against Mr. X regarding the 'undue influence' placed by X on Y but He (Y) can nof claim the ring from Z as Z is not concerned about Y.

94. 2010 - Dec

A. Das entered into contract to sing for B. Roy at a concert for `10,000/- which was received in advance. A. Das being too ill could not sing. B. Roy demanded compensation for loss of profit which he would have made if A. Das had been able to sing. State B. Roy's right. (2 marks)

Answer:

This is doctrine of frustration also known as doctrine of supervening impossibility. At the time of contract, Das was able to sing but later it became impossible for him to sing because of illness. Hence, Das is not bound to pay any damages to B, however, Das should refund the amount of advance to
B.

95. 2011- June

Mr. Sadhu offers to sell his house to Mr. Sarkar at ` 221 lakh but by mistake makes the offer in writing for ` 212 lakh which was accepted by Mr. Sarkar. Can Mr. Sadhu plead the mistake as defence? (2 marks)

Answer:

The offer was made in writing for ` 212 lacs and it was duly accepted by Sarkar. Sadhu cannot deny the offer of ` 212 as it was made by him in writing. He can not take any defense regarding this amount. ,

96. 2011- June

(i) Mr. Adarsh was due to perform on 20th February but on 17th February 2011 repudiated his obligation. On 25th February the Contract become illegal through a change in Law. Mr. Vasant the other Party requested you to give advice on action against Mr. Adarsh. (2 marks)

(ii) Mr. Bose directs Mr. Roy to sell wheat for which Mr. Bose agreed to pay 10% commission on the price fetched by the Goods. Mr. Bose afterwards by a letter revokes Mr. Roy's Authority. But before receiving that revocation letter Mr. Roy sold wheat for` 10,000/-. Mr. Bose refused to pay commission to Mr. Roy. Offer your views. (2 marks)

Answer:
(i) Adarsh was due to perform on 20th Feb but he failed to fulfil his promise. This is a breach of contract. The repudiation on 17th February, 2011 amounts to breach of contract and Vasant is entitled to claim damages. But Vasant is not entitled to claim 'specific performance' as the contract has become illegal.

(ii) Roy sold the goods before receiving the revocation (cancellation) letter, hence sale is binding on Bose and Roy is entitled to claim commission of *l* 1,000/-. The agency is supposed to be terminated when the termination comes to the knowledge of the agent.

97. 2011- Dec
Mr. Ardhendu and Mr. Barun entered into a contract to build a house for a specified consideration. Clause 14 of contract provides that in case of disputes, neither party may move to Court of Law but must accept the decision of an Arbitrator named in the contract. Does this clause violate the provisions of law? (3 marks)

Answer:
No this does not violate any provision of law. When both the parties agree to settle their dispute on the decision of an arbitrator, such provision is in consistency with the law.
According to Section 28 of Indian Contract Act if any party to a contract stops any party to go to Court such condition is invalid in the eyes of law. The exception is in this case when all the parties agree to settle their disputes with the guidance of an arbitrator.

98. 2012- June
Arun seeing a watch in Barun's shop marked for sale for INR 1,000 entered the shop, places INR 1000 on the counter and asks for the watch. Barun refused. Can Barun refuse to sell the watch? Give reasons. (2 marks)

Answer:
No, Barun is not bound to sell the watch. Price label on article only amount to an invitation to offer and not an offer.
Placing of ` 1,000 by Arun amounts to an offer which may or may not be accepted by Barun. ***[Ref. Pharmaceutical Society of Great Britain-Vs-Boots Cash Chemists Ltd, (1953) 1 Q. B. 401].***

99. 2012- Dec
Mr. Menon offered on 1sl December, 2012 to sell his house to Mr. Poison at INR Thirty Five Lakhs. Mr. Poison accepted by email on 2nd December, 2012 at 8 A.M. At 10 A.M. Mr. Poison sent a Fax revoking the acceptance. Both email (i.e. acceptance) and Fax (i.e. revocation) reached Menon at the same time. Hence this was valid.
(2 marks)

Answer:
When the letter of acceptance and letter of revocation of acceptance reach the person at the same time, the effective letter will be that letter which the receiver opens first. In the given case, if Menon opens the letter of acceptance first, the contract would be treated as accepted. If Menon opens the letter of revocation (cancellation) first the contract would be treated as revoked (cancelled).

100. 2013- June
Mr. A offers to buy Mr. B's house on certain terms. Acceptance was to be sent by 'B' within 6 (six) weeks. B within one week sent a letter accepting the offer with an alteration of one term. A then withdrew his offer. B writes again within three weeks accepting the terms originally proposed by 'A[1]. Hence this is a valid contract.
(2 marks)

Answer:
The original proposal of A was altered by B. This amounts to death of original proposal. B's proposal is a counter offer which is to be treated as a fresh proposal. This is not a valid contract even if B agrees to accept the original terms because the original contract was dead when its terms were first altered.

101. 2013- June

Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce? (3 marks)

Answer:

The wife will not succeed because the contract is without consideration. If the transfer is without consideration but there is an existence of mutual love and affection, such transfer is valid in the eyes of law. In the present case the transfer is due to quarrel and arguments and is without consideration, this does not fulfil the essentials of a valid contract.

102. 2013- Dec

Arun, Varun and Tarun are partners of software business and jointly promise to pay INR 60,000 to Karun. Over a period of time, Varun becomes insolvent, but his assets are sufficient to pay one-fourth of his debts. Tarun is compelled to pay the whole. Decide whether Tarun is required to pay whole amount to Karun in discharging joint promise? (3 marks)

Answer:

According to Section 43 of Indian Contract Act,1872 when two or more persons make a joint promise, promisee may, in absence of express agreement to the contrary compel any one or more for such joint promisors to perform the whole of the promise. Further, 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. Therefore, in this case, Tarun is entitled to receive INR 5000 (one fourth of Varun share of debt) from Varun's assets and balance INR 27500 from Arun.

103. 2014- June

W offered to sell his house to M for ` 40 lakhs. Mreplied purporting to accept the offer and enclosed a cheque for ` 20 lakhs. He also promised to pay the balance amount in twenty equal installments. Examine the validity of the contract. (2 marks)

Answer:

Conditional acceptance is no acceptance at all. Acceptance of an offer must be absolute and unqualified i.e., it must conform to the offer. An acceptance, in order to be binding, must be absolute and unqualified [Sec. 7(1)] in respect of all terms of the offer, whether material or immaterial, major or minor. In the case provided, the acceptance is a qualified acceptance; hence it would not result in a valid contract.

104. 2014- Dec

W, the wife of H, who is lunatic, purchases a diamond set of` 10 lacs from a jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the jeweller is entitled to claim the above amount from the property of H. (4 marks)

Answer:

• The problem relates to the provisions of quasi-contract. It is to be noted that minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contrac

• But, under the provisions of Section 68 of Indian Contract Act, 1872

"if necessaries are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person".

• A supplier would also be entitled to recover the price of necessaries supplied to wives or minor child of the incompetent person, as he is legally bound to support them.

• Also necessaries would mean 'goods suitable to the condition in the life of such person' and not luxuries.

• Again person liability is not accrued for minors and lunatics; it is only their estate that would be liable. If there is no property nothing would be realizable.

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

• it is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period.

• Thus the burden to prove that H is lunatic and he was of unsound mind when entered into the contract lies on the seller.

• In the given problem, the jeweler would not be entitled for the claim, as a diamond set worth `10 lakhs for the wife of H, is not a necessity and is surely a luxury.

105. 2015 - June

Abhay, UG degree student was induced by his lecturer to sell his brand new car to the later at less the purchase price to secure more marks in the University examination. Accordingly the car was sold. However, the father of Abhay persuaded him to sue his lecturer. State whether Abhay can sue against the lecturer? (3 marks)

(i) Anita and Binita are friends, Binita treats Anita during Anita's illness.
Binita does not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him ` 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover? (3 marks)

(i) Arvinda took a bet of 20,000 with Bannerjee that a certain horse would win the race. Arvinda and Bannerjee both residents of Kolkata. Arvinda borrowed ` 20,000 from his friend Chatterjee for this purpose. Arvinda lost the bet and paid ` 20,000 to Bannerjee. Can Chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in Ahmedabad between the parties residing there? (3 marks)

Answer:
(b) (i) • Yes, Abhay can sue against his lecturer on the ground of influence under the provisions of the Indian Contract Act, 1872.

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

• As per Sec. 19-A when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

• Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there-under, upon such terms and conditions as the Court may seem just.

(d) (i) • No, Sunit cannot recover the money from Anita. The agreement between Sunit and Anita is not a contract in the absence of consideration. In this case, Sunit's mother, Binita, voluntarily treats Anita during her illness.

• Apparently it is not a valid consideration because it is voluntary whereas cdnsideration to be valid must be given at the desire of the promisor-void Section 2(d).

• The question now is whether this case is covered by the exception given in Section 25(2) which *inter-alia* provides.

• "If it is a promise to compensate a person who has already

voluntarily done something for the promisor"

• Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.

• As Binita's son, Sunit to whom the promise was made, did nothing for Anita, So Anita's promise is not enforceable even under the exception.

(e) (i) • Yes, Chatterjee can recover the loan amount from Arvinda.

• The transaction between Arvinda and Chatterjee is a collateral transaction which is valid, though the main transaction between Arvinda and Bannerjee is void, being a wager.

• Had the transaction took place in Ahmedabad, Chatterjee could not have recovered the loan as in Ahmedabad the wager transactions are illegal and a transaction collateral to it is also void on the ground of illegality.

106. 2015- Dec

The father of a minor girl, Anu, entered into an agreement for her marriage with Vishal. Afterwards, Vishal refused to marry Anu. On attaining majority, Anu filed a suit against Vishai for damages for breach of promises to marry. Vishal contended that Anu cannot enforce the contract as she was not a party to the agreement between him and Anu's father. Is Vishal's contention valid? (3 marks)

Answer:

An agreement is made in connection with marriage, partition or other family arrangements, and a provision is made for the benefit of some person.

In such cases, a person, for whose benefit the provision is made in such family arrangements, can enforce the agreement even if he is not a party to it. '

It may, however, be noted that provision must be made for the benefit of the person who wants to enforce such marriage arrangements.

No, Vishal's consent is not valid.

The marriage agreement or other family arrangements where a provision is made for the benefit of some person can be enforced by the beneficiary even if he is not a party to the same.

107. 2015- Dec

X Father promised to pay his son Y a sum of ? One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along with reasons whether Y can recover the amount under the Indian Contract Act, 1872. (5 marks)

Answer:

• Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 10.

• According to the provisions there should be an intention to create legal relationship between the parties.

• Agreement of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced.

• This principal has been laid down in the case of *Balfour Vs. Balfour.*

• Accordingly, applying the provisions and the ease decision, in the case Y cannot recover the amount of Rupees one lakh from X for the reasons explained above.

108. 2016- Dec

A, aged 16 years, was studying in an engineering college. On 1 June, 2015 he took a loan of ` 2 Lakhs from B for the payment of his college fee and agreed to pay by 31s1 July 2016. A possesses assets worth ` 20 Lakhs. On due date, A fails to pay back the loan to B. B now wants to recover the loan from A out of his assets. Whether B would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. (5 marks)

Answer:

The problem in question is covered under the exceptions. As per Section 68 of the Indian Contract Act, 1872 though a minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, this 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. This type of contract is called a Quasi-contract and the right of the supplier/tender is based on the principle of equity.

Hence, in the given case B will be entitled to recover the amount of loan given to A for payment of college fees from the property of A, the minor. Space to write important points for revision

109. 2017- Dec

A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A

left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so. (5 marks)

Answer:
According to the provisions of the Indian Contract Act, 1872, as contained - Section 27 any agreement through which a person is restrained from exercising a lawful profession or trade/business is void.
But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade.
Therefore, 'A' cannot be restrained by an injunction from doing so.

110. 2018- Dec
C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed. (5 marks)

Answer:
Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her husband).
If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.
But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.

(ii) Where the wife is given sufficient money for purchasing necessaries.

(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.

(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).
In the Present Case: 'B' will succeed. He can recover the said amount from 'A' if sarees purchased by 'C' are necessaries for her.

111. Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of ` 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth ` 15 lakhs. On due date Sunil fails to pay back the loan to Anil. Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

112. 2013 - June
Write short notes on:

(i) Quasi contract (4 marks)

(ii) Discharge of contract (4 marks)

Answer:
(i) Quasi Contract:
Quasi contract is a fictitious contract in which the concerned parties do not intend to create a contract between them. In such contract, there is no regular offer and acceptance and no agreement between the parties, even then there exists a contract which is imposed by Court of law. Even in the absence of a contract, social relationships require certain duties to be performed by a certain persons. If a person finds some goods belonging to another person, he is required to return those goods to the actual owner even though there is no contract between the owner of goods and finder of goods. This is an example of quasi contract.
Quasi contract creates the same obligation (duty, responsibility, commitment) as the regular contract. Quasi contracts are based on the principles of equity, justice and good conscience.

Quasi contracts are also called Constructive contracts or Implied-in-law contracts.
The basic principle lying behind quasi contract is that no person should be allowed to gain something at the expense of some other person.
This type of contract is designed to remedy the cases of unjust enrichments or unjust benefits.
Features of Quasi contract:

1. It is imposed by law. It does not arise by offer, acceptance and agreement.

2. It is based on the duty of a party and not the promise of that party.

3. It is a right which is available not against the whole world, but against a particular person or persons only. In this respect it is similar to a regular contract.

4. It can be sued in a Court of law. This way it is also similar to regular contract.

(v) Discharge of Contracts: A contract can be discharged or terminated by any of the following eight ways

1.	By Performance or by Completion	The contract is completed on terms and conditions as stipulated in the agreement and it comes to an end after successful execution of all the items of contract. This is also called discharge by performance.
2.	By Mutual Consent	When the parties to the contract mutually agree to (a) by novation i.e. to substitute a new contract or (b) to withdraw and cancel it or (c) to alter or modify it (d) by remission i.e. reduction in performance required.
3.	By Doctrine of Frustration «	When a contract becomes impossible to be performed at a future date after the agreement, it is called supervening impossibility or Doctrine of Frustration. If the impossibility existed at the time of agreement, it falls under the category of impossibility of performance and the contract is void ab-initio. Subsequent to agreement, the impossibility of performance may be due to the following reasons: (a) Non existence or non occurrence of a particular state of things; (b) Breaking out of war; (c) Illegality of performance at a subsequent date; e.g. insolvency etc (d) By death or disablement of parties. (e) Destruction of subject matter e.g. A house is to be let out as per agreement and that house is destroyed in fire or earthquake.
4.	By Breach of contract	When there is a default on the part of one party regarding its performance in the contract, there is a breach of contract. It can be actual breach or anticipatory breach. When one party leaves the contract before its due date of completion, it is called anticipatory breach. The suffering party is entitled to compensation for damage.
5.	By Lapse of time	Contract should be completed before the application of Law of limitation which states that the contract should be performed before the expiry time limit set for it. In other words the contract should be performed before it is barred by law of limitation. In such a case there is no remedy is left for the contractor (promisee).
6.	By Operation of law	When the client dies or goes insolvent, there is discharge by operation of law.
7.	On the ground of accord and satisfaction	Any party is satisfied in any manner by the other party, in lieu of contract, this is called discharge by accord and satisfaction.
8.	By noncooperation of client	If the client does not provide reasonable facilities or opportunities for performance to the contractor, the contract is assumed to be discharged.

113. 2017 - Dec
Write short note on the following term:
Contingent Contract (5 marks)

Answer
Section 31 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essentials of contingent contract-

• Uncertainty and futurity of the event to which it is related;

• Uncertain future event must be collateral to the contract.

An agreement to sell unspecified half share in the property is not contingent contract as held in *Harbakhash Singh Gill V. Ram Rattan'AIR 1988 P&H 60. In 'Bhairon Prasad Chaurasiya V. Smt. Tara Devi'-AIR 1980 All.* 36
it was held that an agreement to sell a house is by no means a 'contingent contract'. An agreement to purchase a property is neither a contingent contract nor can it be characterized as a mere possible right or interest. It was contended that the contract is a 'contingent contract' because of either of the parties to the contract may refuse to perform his part on the contract. The Court held that the argument is fallacious. Such a contingency would not be a collateral to a contract.
An agreement to purchase a property is neither a 'contingent contract' nor can it be characterized as a mere possible right of interest. Reciprocal promises are not contingent contracts as they cannot be said to be collateral to each other. The law allows the enforcement of a contingent contract after the event upon which it was contingent has happened. The contingency which is the essence of a condition must be distinguished from mere futurity. An obligation is not to be classified as conditional because its performance is not yet due.
A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person.

114. 2018 - Dec
Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872. (10 marks)

Answer:
Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are called as - quasi contracts as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience.
The salient features of quasi-contracts are:

Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money
Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a" contractual right.

Circumstances identified as quasi-contracts:
1. Claim for necessaries supplied to persons incapable of contracting (Sec.-68); Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

2. Right to recover money paid for another person (Sec.-69): A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

3. Obligation of person enjoying benefits of non-gratuitous Act (Sec.-70): 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.

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

5. Liability for money paid or thing delivered by mistake or by coercion (Sec.-72): A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.
In all of the above cases contractual liability arises without any agreement between the parties.

115. 2013 - June
X agrees to pay Y a sum of money if Y marries Z. Z however marries F, who died subsequently. After the death of F, Z marries Y. Whether X is legally bound to pay the agreed sum of money to Y? Comment. (2 marks)

Answer:
Any contract of restraining the marriage is invalid. The original contract was dead at the time when Z married F. X is not legally bound to pay any sum to Y.

(116) 2017 - June
Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr. P promises to pay ` 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that specific day of December and Mr. Q filed a suit for recovery of ` 5,000 from Mr. P. Can Mr. Q recover the amount under Indian Contract Act, 1872? (6 marks)

Answer:
In this case Mr. P bet with Mr. Q on the possibility of having rain on a specific day of December. Section 30 provides that agreement by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Therefore, the agreement between Mr. P and Mr. Q is of wagering nature and hence void. Thus, despite of no rain on specific day of December, Mr. Q cannot recover the amount of ` 5,000 from Mr. P for the reason of entering into an agreement of a wagering nature.

(117) 2018 - June
Mr. X, a businessman has been fighting a long drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of ` 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay.
Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872. (5 **marks)**

Answer:
The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either • illegal or void. Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr, Z cannot recover the amount of ` 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

(118) 2010- Dec
How the surety is discharged from liability? (4 marks)

Answer:
The surety (guarantor) is discharged when:

(a) Under any of the following conditions, a surety is discharged from liability:
(i) A new contract is made in place of the old contract;

(ii) Surety (guarantor) is dead ;

(iii) Surety gives notice that he is no longer surety (notice of revocation)

(iv) The contract itself becomes void.

(b) From the conduct of the creditor :

(i) Change in terms of contract between creditor and debtor without the consent of surety;

(ii) Release or discharge of the debtor by the creditor on any grounds;

(iii) if the creditor loses any security given by surety, the surety is discharged with the value of such security.

(119). 2011- Dec

Mr. Barick owes Banker a debt guaranteed by both Mr. Arora and Mr. Bora. The Banker releases Mr. Arora one of the co-sureties. Hence the remaining i.e. other surety (Mr. Bora) is also released automatically. Offer views. (2 marks)

Answer:

When a loan is guaranteed by more than one person, all persons (guarantors) are responsible for the payment of loan. If bank releases one person from guarantorship, that does not mean that the other guarantors are automatically discharged of guarantee. In the present case, Mr. Bora is still a guarantor and he is not discharged from his surety ship.

(120) 2012- June

In the event of principal debtor being a minor, creditor can not recover his money, from the surety-offer your views. (2 marks)

Answer

The statement is true. As the liability of minor is nil, the liability of the surety of minor would also be nil. There are contrary judgments about this matter. Some decisions of some courts say that the surety is liable to pay the creditor if the principal debtor who is a minor, fails to pay. There are some judgments which state that as the liability of a minor is nil, the surety can not be forced to pay if minor debtor fails to pay.

(121). 2012 - Dec

A surety is discharged from his liability where there is failure of Consideration between the Creditor and the Principal Debtor in a Contract of Guarantee. (2 marks)

Answer:

According to the Indian Contract Act, 1872, consideration is an essential element of any contract. If there is no consideration there is no contract. In the present case, there is a failure of consideration between the creditor and the principal debtor, hence the surety has no responsibility towards such contract because it is no contract at all. In such case the surety is discharged.

(122). 2014 - June

In a contract of Guarantee, A surety is discharged from his liability where there is a failure of consideration between the creditor and the principal debtors. Comment. (2 marks)

Answer:

According to the provisions of the Indian Contract Act,1872, presence of a lawful consideration is an essential element for a valid contract. Therefore, where in a contract of guarantee, there is a failure of consideration between the creditor and the Principal Debtor, the surety is discharged.

(123). 2014 - Dec

State the circumstances in which surety is not discharged. (3 marks)

Answer:

As per provisions of Indian Contract Act, 1872 Surety is not discharged in following circumstances

(a)	When Agreements made with third person to give time to principal debtor (Section 136)	Where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.
(b)	Creditor's Forbearance to Sue (Section 137)	Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other .remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.
(c)	Release of One Co-Surety (Section 138) *t*	Where there are co-sureties, a release by the creditor of one of them does not discharge the others: neither does it free the surety so released from his responsibility to the other sureties.

(124). 2008- Dec

BEE owes 10,000/- to CEE. Amount was guaranteed by GEE. Said debt becomes payable on 25.10.07. CEE does not sue BEE. Hence due to delay GEE is automatically discharged from his surety ship.-Comment. (2 marks)

Answer:

False: Gee is not automatically discharged from his suretyship just because CEE does not sue BEE unless such provision is expressed in the guarantee agreement. GEE still remains guarantor for BEE to CEE.

(125). 2009- June

'A' executed a guarantee in favour of State Bank of India as Security for a loan to 'B'. Later 'A' contended that the guarantee was not enforceable as it was not supported by consideration as he was not paid guarantee commission. Is 'A's stand correct in law? (2 marks)

Answer:

Lawful consideration is an essential component of a contract of guarantee. Sufficiency of consideration is not required and it is not necessary that something'must have been done for the benefit of the Guarantor. Anything done or any promise made for the benefit of the principal debtor is a sufficient consideration to the surety/guarantor for giving the guarantee.

(126). 2009- Dec

Statesman publishes at the request of Mr. D.D. a libel upon Mr. S.S.,Mr. D.D. agrees to indemnify the Statesman the consequences of the publication if any. Mr. S.S. sued Statesman to pay damages. Statesman paid ` 2,00,000 to Mr. S.S. and demanded the amount from D.D. who refused. State legal provision. (2 marks)

Answer:

(Libel means defamation) Statesman has done a criminal act against Mr. S.S. When one person employs another to do an act which is criminal, the employer is not liable to the agent. There is no right way to do the wrong thing. Mr. D.D. is not liable to pay. Statesman is accountable for its criminal act and it does not matter who instigated it to do the crime.

(126). 2010- Dec

Mr. Bose is indebted to Mr. Das and Mr. Ghosh is the
surety. When Mr. Bose & Mr. Ghosh refused to pay, Mr. Das sued the surety (Mr. Ghosh) who paid the amount & cost as per orders of the Court. Can the surety recover the amount from Mr. Bose? (2 marks)

Answer:

Yes, It is implied condition in the contract of guarantee that the guarantor can recover the amount from the debtor. In this case the debtor Mr. Bose did not pay the amount to his creditor Mr. Das. Mr. Das went to Court and as per order of the Court the guarantor Mr. Ghosh paid the debt. Mr. Ghosh can recover the said amount from Mr. Bose.

(127). 2011- Dec

Mr. Ray made a contract with Mr. Basu to grow vegetables on Mr. Ray's . land and to deliver to Mr. Basu at a fixed rate. Mr. Karmakar guarantees Mr. Ray's performance of this contract. Mr. Basu diverts stream of water which is necessary for production thereby prevented Mr. Ray to grow vegetables. Mr. Ray fails to supply as per contract. Hence Mr. Basu sues Mr. Karmakar (guarantor), for non-performance. Advise. (2 marks)

Answer:
As per Section 67 of the Indian Contract Act, 1872, contracts need not be performed when promisee neglects or refuses to afford the promisor reasonable facilities for performance of promise. Mr. Karmakar is no longer liable on his guarantee as Mr. Basu violated the contract by not supplying stream of water to Mr. Ray.

(128). 2012- Dec
Mr A, Mr B & Mr C are Sureties to Mr D for the sum of INR 6000 lent to Mr E. Mr E failed to repay on due date. Mr A one of the sureties, disagreed to Pay. Advise whether 'A' is right. (2 marks)

Answer:
All sureties are equally responsible for the debt. As the debt was for INR 6000, and there are three sureties each surety will be responsible for one-third of the amount i.e. for INR 2000. Any surety cannot escape from this responsibility.

(129). 2013- June
Mr. Mitra guarantees payment to Mr. Basu to the extent of INR 50,000 for time to time supply of paper by Mr. Basu to Mr. Chandan. Basu supplies paper to Chandan more than the value of INR 50,000 and Mr. Chandan pays. Later on Mr. Basu, at the request of Chandan, supplies paper valued INR 60,000. This time Chandan fails to pay. What action Basu can take against Mitra? (2 marks)

Answer:
In this case, guarantee given by Mr. Mitra is a continuing guarantee (Sec.129) and accordingly Mr. Mitra being guarantor of INR 50,000, he is liable to Mr. Basu to the extent of INR 50,000 only. Mr. Basu can recover the balance amount from Chandan.

(130). 2014- June
'A' contracts with 'B' for a fixed price to construct a house for 'B' with 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? (2 marks)

Answer:
• In this case C is surety for A's performance. Performance of A depends on the supply of material by B. B does not supply the required material which makes A unable to perform his part of contract.

• According to the 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 released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

• In the given case, B omits to supply the necessary material.

• Hence, C is discharged from his liability.

(131). 2009 - June
Write explanatory note on:
Bailee's particular lien. (4 marks)

Answer:
Bailee's particular lien means bailees right to retain the goods given to him by the bailor till the time of payment of his service charges by the bailor. As soon as the payment is made by the bailor, the lien comes to end. Where the bailee has in accordance with the purpose of the bailment rendered any
service involving the exercise of labour or skill in respect of the goods bailed he has in the absence of a contract to the contrary, a right to retain such goods until he received due remuneration for the services he has rendered in respect of them.

(132). 2010 - June
Sale and Bailment are same. Do you agree? (4 marks)

Answer:

No, they are not same. There are many points of difference between them as given below

Sale	Bailment
A sale involves transfer of ownership and physical transfer of property.	Bailment involves physical transfer of property, ownership is not disturbed.
Parties involved are called seller and buyer.	Parties involved are called bailor and bailee.
The property is never taken back after transfer. Contract is over when buyer takes the possession of property after payment.	Property is taken back as per terms of bailment. Contract is not over when bailee takes the possession as the property is to be returned back to the bailor.

(133). 2011- June

State the different kinds or types of Bailment. **(4 marks)**

Answer:
Bailment may be classified into Six kinds as follows:

(i) Deposit: Delivery of goods by one man (Bailor) to another (Bailee) to hold them on his behalf.

(ii) Commodatum : Goods lent to a friend or relatives gratis (i.e. free of charge) for use by friends or relatives.

(iii) Hire : i.e. goods lent to the bailee for hire i.e. in return for payment of money.

(iv) Pawn or Pledge: Deposit of goods with another by way of security for money borrowed.

(v) Delivery of goods for being transported or something to be done about them by the bailee for reward.

(vi) Delivery of goods for being transported or something to be done about them by the bailee without reward.

(134). 2012- Dec

Goods seized by Customs Authority is a case of bailment under Indian Contract Act—offer your views.

(2 marks)

Answer :
When the goods are transferred to any person, the person having the possession is responsible for such goods as it is a case of bailment. In this case the possession of goods is with the customs authority, therefore bailment exists as per the Indian Contract Act, 1872.

(135). 2014 - June

Deposit of money in a bank does not constitute bailment. Justify. **(2 marks)**

Answer:
Bailment is concerned with only moveable goods. Money is not included in the category in moveable goods. As such deposit of money is not bailment.

(136). 2016 - Dec

What are the rights of a finder of goods under the Indian Contract Act, 1872? **(4 marks)**

Answer:

A finder of goods has the following rights under the Indian Contract Act, 1872

1.	Right of lien	The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding, out the owner. But he has no right to sue the owner for any such compensation (Section 168).
2.	Right to sue for reward	The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168).

3.	Right of resale	The finder has a right to sell the goods in the following cases: (a) where the goods found is in-danger of perishing; (b) where the owner cannot, with reasonable diligence, be found out; (c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and (d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3rd of its value.

(137). 2019 - June

State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge. (9 marks)

(138). 2012 - June

Saxena lets to Mr. Menon for hire a horse for his own riding but Mr. Menon drives the horse in his carriage. What action Saxena can take? (2 marks)

Answer:

• Saxena is bailor because he has given his horse to Menon (bailee) under the condition that Menon would use the horse for his own riding.

• This is a case of bailment where one person (bailor) gives his goods to another person (bailee) under certain conditions.

• The bailment may be cancelled or terminated if the conditions of bailment are not satisfied at the option of bailor.
• In this case it is at the option of bailor Saxena to cancel or continue the bailment as Menon has not followed the conditions of bailment.

(139). 2012- Dec

On 01.11.2012 Mr. Barun kept his cow under the custody of Mr. Tarun for one month and paid INR 1000 for maintenance. On 15.11.2012, the cow gave birth of a calf. On 30.11.12 Tarun returned the cow retaining the calf. (2 marks)

Answer:

• According to Indian Contract Act, The goods given as bailment still belongs to giver (bailor) and any profit or income arising out of goods belongs to the bailor Barun.

• Hence bailee (with whom the goods are kept) should not only give the cow but also the calf. He (Tarun) should not keep the calf with him.

(140.) 2013- Dec

Arvind hires a carriage of Govind and agrees to pay INR 500 as hire charges. The carriage is unsafe though Govind is unaware of it. Arvind is injured and claims compensation for injuries suffered by him. Govind refuses to pay. Discuss the liability of Govind. (3 marks)

Answer:

• Problem asked in the question is based on the provisions of the Indian Contract Act, 1872, as contained in the Section of 150. The section provides that if the goods are bailed for hire, the bailer is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

• Accordingly, applying above provisions in the given case Govind is responsible to compensate Arvind for the Injuries sustained even if he was not aware of the defects in the carriage.

(141). 2015 - June

Mr Jatin found a wrist watch in shopping mall. He made all efforts to trace the true owner of the wrist watch but could not find him. He sold the same to Nitin, who buys without any knowledge that Jatin is merely a finder. Is sale by Jatin to Nitin valid? Decide. (3 marks)

Answer:
When thing which is commonly the subject of sale is 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:
The finder of goods can sell the goods only in the circumstances permitted under section 169 of the Indian Contract Act, 1872 which are as under:

(a) If the goods are in danger of perishing or losing the greater part of their value, the finder can sell the goods.

(b) If the lawful charges of the finder in respect of the goods amount to a minimum of two-third of the value then the finder can sell the goods.
In the present case, the sale by the finder will not be valid as it does not seem to fall in any of the above stated circumstances. Hence, the sale by Jatin to Nitin is invalid.

(142). 2013- June
On expiry of stipulated period, the pledgee can sell the pledged goods to any person. (2 marks)

Answer:
Pawnee/Pledgee cannot sell. Pawnee/Pledgee is to give notice to pawner indicating his intention to sell. Notice of sale is essential even where the agreement specially excludes it (Sec. 176). Hence, this is void and unenforceable.

(143). 2011- June
Mr. Saxena, a Pledgee incurred extra-ordinary expense for preservation of goods pledged. Pledgee refused to return such goods till the payment is settled, can he retain? (2 marks)

Answer:
The pledgee is entitled to recover the expenses incurred by him from the pledger, but he has no right to retain the goods for recovery of such expense. If the expenses are not paid, he can go to Court to recover the same.
Space to write important points for revision

(144). 2015 - June

Nishant lends a sum of ` 8,000 to Prashant on the security of ten shares of XYZ Ltd. on 1sl Jan, 2015. On 25,h March, 2015, XYZ Ltd. has issued one Bonus share. Prashant return the loan amount of ` 8,000 with interest to Nishant. But Nishant returns only ten shares which were pledged and refuse to give one bonus share. Advise, Prashant in the light of the provisions of the Indian Contract Act, 1872. (3 marks)

Answer:
• As per the provisions of Section 163(4) 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".
• Applying the provisions to the instant case, the bonus share is an increase on the shares pledged by Prashant to Nishant.

• So Nishant is liable to return the shares along with bonus share and hence Prashant the bailor, is entitled to receive the bonus share also from Nishant *(Motilal VS Bai Marti).*

(145). 2015 - Dec
Kavita falsely representing herself as the wife of a millionaire, takes a necklace from a jeweller's shop for the approval of her husband. She pledges if with a pawn broker who in good faith and without notice of the fraud pays her ` 1,00,000. Can the jeweller recover the necklace from the pawn broker? (3 marks)

Answer:
• The necklace cannot be recovered from the pawn broker.

• The jeweller intended to contract with the person present before him.

• He was not mistaken about his identity but only about his attributes.

• His intention was to sell to the person present i.e., there was consent, but it was vitiated by fraud.

• Hence the contract is voidable and not void.

• In case of a voidable contract, before it is repudiated, one can pass a good title to the pledgee or purchaser in good faith. Thus, in the instant case, the pledge is valid.

• It may be noted that in the given case if Kavita would have falsely represented herself as the wife of a certain well known millionaire; it would have been a case of mistake as to the identity of person contracted with, rendering the agreement *void ab-initio,* thereby enabling the jeweller to recover the necklace from the pawn broker.

(146). 2009 - Dec
Write short note : (v) Agency of necessity. **(4 marks)**

Answer:
Agency of necessity:

• When someone is forced by circumstances to act as an agent of principal without his authority, it is agency of necessity.

• Suppose a horse is sent by a person to another person who does not take delivery of the horse at the destination.

• The station master has to feed the horse and take care of it.

• It is held that the station master becomes agent of the principal out of necessity and the principal must compensate him.

Following conditions must be satisfied for 'agency of necessity.

(i) It was not possible or reasonable to obtain permission or instruction of the principal.

(ii) The action taken was with bona fide intention.

(iii) The agent has taken all reasonable and necessary steps to safeguard the interest of principal.

(147). 2011 - Dec
Write short note on.
(i) Agency by ratification; **(4 marks)**

Answer:
Ratification means the subsequent adoption and acceptance of an act originally done without instruction or authority. Ratification may be expressed or implied i.e. it may be expressed in words or by conduct.

• Ratification is an approval of a previous act or conduct.

• It implies the adoption by the principal of an act done by an agent in his behalf, but without his authority.

•' Section 196 of the Contract Act provides that "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."

• Thus ratification relates back to the date when the act was done by the agent. It is simply adoption of the old contract.

• It only endorses the unauthorised act of the agent as authorised. Worded differently, it is equivalent to previous authority.

(148). 2008- Dec

An agent retained all the stock and other papers of a principal until his pending dues are cleared by the principal. State legal position. (2 marks)

Answer:

True : The agent has lien (lien means possession, practical control) over stock and other papers of the principal if his fee/commission is not paid to him. Unless some contrary measures exist in the agreement, the agent has right to retain property, papers or stock of principal until the amount due to him is paid to him or accounted for or adjusted in any manner in his accounts.

Space to write important points for revision

(149). 2010 - June

Discuss the position of Agent appointed by minor. (2 marks)

Answer:

Minor is not supposed to take decisions. He can neither enter into a contract nor can he appoint agent. Such agents will be deemed to be not appointed at all and their appointment will be null and void in the eyes of law.

(150). 2018 - June

State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal ? (10 marks)

Answer:

The general rule of the Indian Contracts Act, 1872 states that:

(i) Only the principal can enforce and can be held liable on a contract entered into by an agent.

(ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

1. Foreign Principal: When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.

2. Personal liability by agreement: Where it is expressly provided in the contract that the agent shall be personally liable.

3. Undisclosed principal: Where agent does not disclose the name/identity of the principal.

4. Principal cannot be sued: Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.

5. Non-existence of Principal: When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.

6. Agent's liability: When the agent exceeds his authority or commits a breach of warranty of authority.

7. Pretended Agent: When he acts as a pretended agent.

8. Mistake or Fraud: When he receives or pays money by mistake or fraud.

9. Agent sign an agreement without mentioning that he is an agent: Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.

10. Trade or customs: Where the usage of trade or custom makes an agent personally liable.

(151). 2009- June
State the rights and liabilities of 'A' in the following cases:

(i) 'A' is owner of the factory building and also of product. 'A' authorises 'B' to take an insurance policy on factory building for ` 2 lacs. 'B' procures a policy for ` 2 lacs on factory and another policy for ` 2,000 on products. 'A' refused to reimburse to 'B'. (2 marks)

(ii) 'A' authorises 'B' to buy 500 pieces of Sunlight soap for him but 'B buys 500 pieces Sunlight and 200 pieces Henko at a total price of ` 5,000. 'A' refused to pay to 'B'. (2 marks)

Answer:
(i) In this case "B" was not authorized to pay the premium for a policy for the products.
Since both the policy and the value can be separated, A is bound to pay the premium for the policy on factory buildings but not the premium for the policy on the products.
(ii) In this case, the agent i.e. "B" does more than what he is authorized to do and the amount of ` 5,000/- can not be separated between Sunlight and Henko. "A" may repudiate and say no to the whole transaction. As per Contract Act, the principal is not bound when excess of Agent's Authority is not separable and measurable. It is at the option of A whether to approve it or reject it.

(152). 2010- June
Mr. Tarafdar instructs Mr. Kinkar, a merchant, to buy a ship for him. Mr. Kinkar employs a renowned ship surveyor to choose a seaworthy ship for Mr. Tarafdar. The ship turns out to be un seaworthy and is lost. Mr. Kinkar, who is agent is responsible. (2 marks)

Answer:
Mr. Kinkar is not responsible as Mr. Tarafdar is also supposed to see the seaworthiness of the ship before buying. Mr. Kinkar is acting as agent and he has all the lights to appoint another person as agent as this is a case of technical expertise. Mr. Kinkar cannot be charged of negligence as he has appointed a renowned firm for the survey.

(153). 2010 - Dec
Mr. Roy consigns some fruits to his agent Mr. Paul at Mumbai with direction to send those fruits to Mr. Kar at Chembur. Mr. Paul sold fruits, which were spoiling at Mumbai below cost price without prior consent of Mr. Roy. Whether Mr. Paul's action was valid? (2 marks)

Answer:
• -Mr. Paul's action is justified. He has taken this action in the interest of his principal and to reduce loss to the principal.
• It is simple understanding that the fruits should be sold if they are likely to become bad.
• An agent has authority to act on behalf of his principal in emergency with normal reasoning and prudence.

(154). 2012- June
Mr. A being an agent of Mr. P (who is owner of land) agrees for money to obtain for Mr. B a lease of P's land but without the knowledge of 'P'. Discuss the validity of this agreement. (2 marks)

Answer:
When an act is done by one person on behalf of another but without his knowledge or authority, the later may elect either to ratify or disown such Act (sec 196 of The Indian Contract Act, 1872).
In the instant case if a lease is granted by "A" in favour of B on the fact coming to the knowledge of the P, he may either decide to ratify the lease agreement or'to disown it.
If the P decides to ratify the lease, then it would be a valid contract.

(155). 2012 - June

Jayanta, the owner of a car handovers the car with key to Partha (the mercantile agent) to sell the car at a price not below INR1,00,000. Partha (the agent) sold at INR 90,000 to Amitava who buys in good faith and without notice of reserve price/or any fraud. Partha misappropriated the money also. Jayanta filed a suit against Amitava to recover the car. Advise with reasons whether Jayanta can succeed. (3 marks)

Answer:

Amitava has purchased the goods in good faith and he was not aware that the agent has not complied with the conditions of sale as set by the owner Jayanta. In this case the agent Partha has not fulfilled the condition that the sale should not be below INR 1,00,000 but this is not the fault of buyer Amitava as he was not aware of the agreement between original owner Jayanta and his agent Partha.

Jayanta cannot recover the car from Amative as sale by his agent is a valid sale. Jayanta can sue against his agent Partha but cannot sue against Amative.

(156). 2015 - Dec

Bimal at Durgapur under instruction from Amal of Kolkata contracts with Kamal to deliver electric oven to him. Amal does not send the oven to Bimal and Kamal sues Bimal for breach of contract. Bimal informs Amal of the suit and as per Amal's advise Bimal defend the suit. Bimal compelled to pay damages, costs and incurs expenses Amal refuse. Advise Bimal. (3 marks)

Answer:

• As per Section 222 of the Indian Contract Act, 1872, the principal is bound to indemnify an Agent against the consequences of all Lawful acts done by the agent in exercise of authority conferred upon him.

• Sec. 223 further provides where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

• In view of above, Amal is liable to Bimal for such damage, cost & expenses.

SALE OF GOODS ACT, 1930

UNIT 1 SALE OF GOODS ACT 27 -

→ INTRODUCTION

1. Earlier it was a part of contract act 1872 which was later on shifted as a new law called Sales of Goods Act

2. It came into force on 1 July 1930.

3. This law applies on whole of India excluding Jammu & Kashmir.

4. It applies on sale of goods only and not on immovable property.

5. There is a seperate law for sale of immovable property that is transfer of property act 1962.

→ MEANING OF SALE

1. Sale refers ~~to~~ transfer of property in goods for a price.

2. Transfer of property means transfer of ownership. It means goods may or may not go, but ownership goes definitely

3. Generally goods go to the buyer but it is not a pre condition of sale.

4. Sale takes place when ownership goes for a price which means if price is not there, it is either a ~~gift~~ gift or donation.

5 Price must be determined before sale and need not to be paid at the time of sale.

6. It means credit sale is a valid as cash sale. Law doesnot differentiate between the two.

7. Price means monetary consideration for obtaining the goods which may or may not be adequate.

8 Price in monetary terms means current currency coins or notes must be the mode of payment it can never be in kind, else it will become barter

9. Exchange sale where old article is given as part consideration and balance is paid in cash shall be considered as sale.

10-SO it is clear that following elements must be present in ~~sale~~ the Sale:-

a sale is a permanent transfer.
b It is a transfer of ownership.
c It is a transfer of ownership of goods and not on immovable property.

d Transfer is never free and consideration is compulsory.

e consideration must be in monetary terms. otherwise it will be a valid contract but it will not be sale.

f consideration must be decided before sale else it will be just a contract. but not sale.

g sale may be cash sale or creditsale or both have equal validity.

→ MEANING AND TYPES OF GOODS.

1. Goods means and includes tangible & moveable articles.

2. It includes growing crop, grass or things attached with the land, which shall be separated from land before sale.

3. It means if they can be transported from one place to another without dismantaling the true position, it shall be goods.

4 It doesn't include actionable claims and money.

5. Actionable claim means right to receive money from someone such as a person who lottery.

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6. Goods can be of two types :-

a Existing Goods - Means goods which are ready for sale at the time of sale itself. seller has performed all its duties with goods but only sale is pending.

b Future goods — which means goods not yet ready ~~which~~ it means seller has not performed all his duties on such goods. such goods cannot be sold out. Only an agreement can be made with respect to these goods.

7. Existing goods are of two types :-

a Goods which are made available by seller to the buyer as an offer for sale. It means whatever goods are made available in the shop or showroom as ready for sale are called GENERAL GOODS.

b Goods which are demanded by the buyer for purchase are called specific goods. These are part of general goods only because buyer demands something from general goods only. Specific goods are demanded, this doesn't mean that they are finally sold as well. It means specific goods do not means sold out goods.

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8. Specific goods are of two types :—
a) Goods which are finally selected by buyer for sale. These are goods which become subject matter of sale. They are called ASCERTAINED GOODS.
b) All other goods which remain unselected and do not become subject matter of sale are called UNASCERTAINED GOODS.

9. Future goods are of two types :-
a Goods which are not ready but they will get ready in near future. seller will perform all his duties on these goods. Will become ready for sale. They are called ~~FUTURE~~ FUTURE GOODS

b Goods which are not yet ready and also there are contigencies that ~~they~~ whether they will get ready are called ~~CONTINGENT~~ CONTINGENT GOODS. They are similar to future, but they are different in a sense that future goods are more certain and contingent goods are less certain.

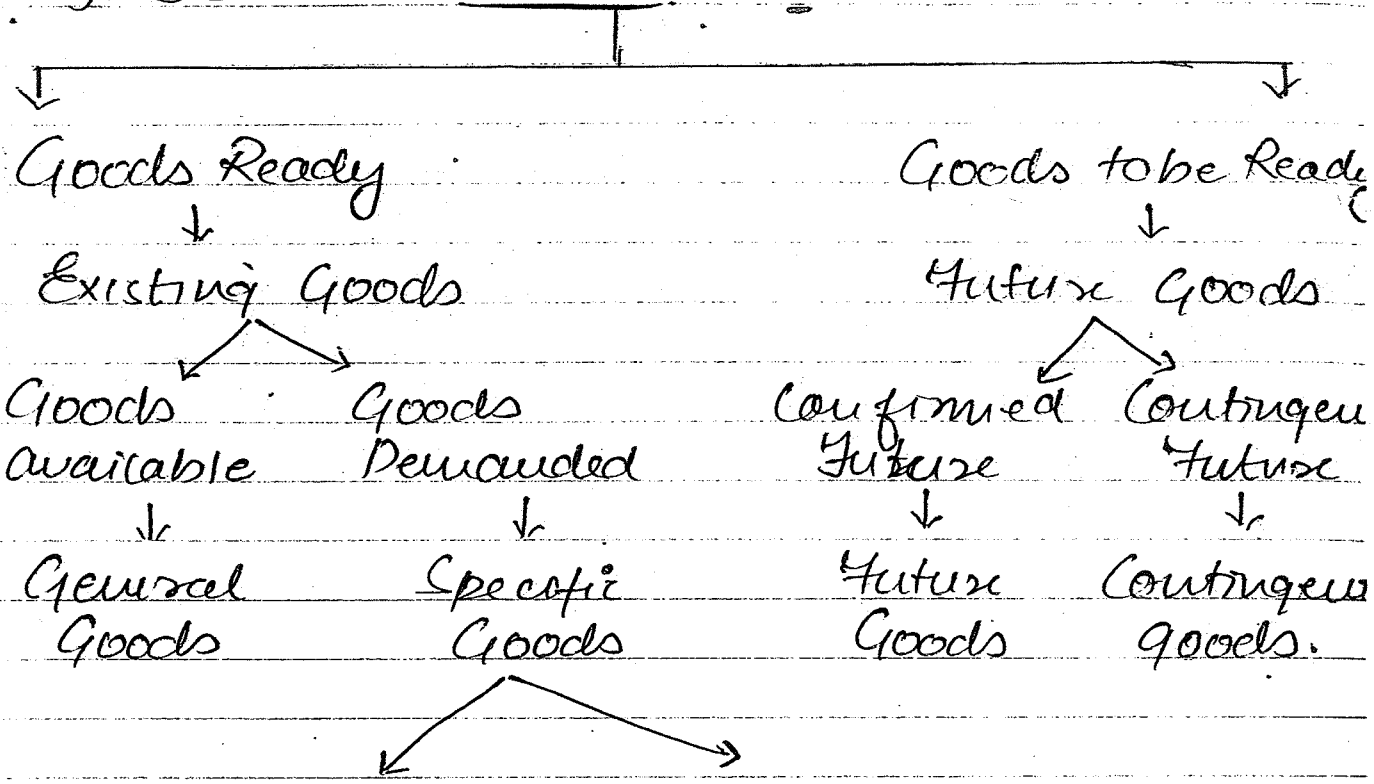
→ TYPES OF GOODS

↓

Goods Ready

Goods to be ready

TYPES OF GOODS



→ MEANING AND TYPES OF DELIEVERY

1. Delievery means voluntary transfer ~~from~~ of possession from one person to another

2. So delievery does not means transfer of goods, it actually means transfer of right to use the goods.

3. If goods are physically transported from seller to buyer, it is absolutely

abright but this is not the only way of doing - delievery.

4. Delievery can take place in two different forms :—

a <u>actual delievery</u> which means goods are physically transported from one place to another.

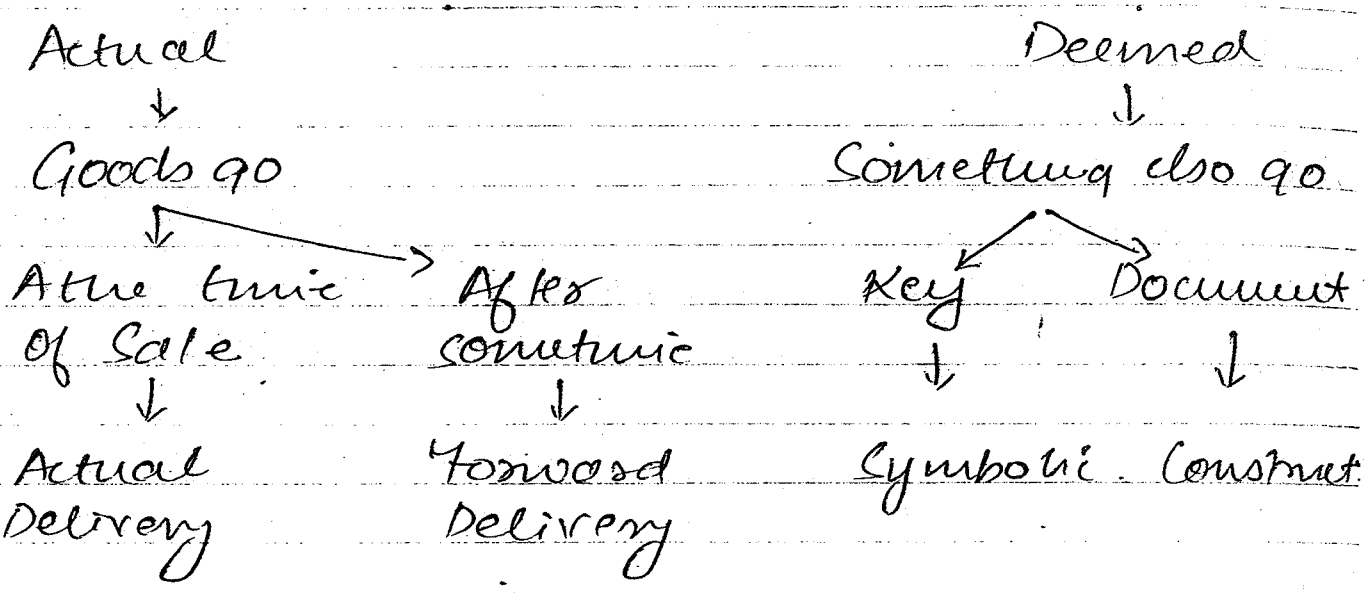
b <u>Deemed delievery</u> which means some symbol of goods or document of goods are transfered, and this is treated as delievery.

For Eg:—

1) When key of new car are handed over to the buyer, it is considered as actual delievery and is known as, SYMBOLIC DELIEVERY.

2) when an old car is sold out and RC (Registration certificate) is transfered in name of the buyer ~~and~~, only then delievery is considered as complete. This is known as CONSTRUCTIVE DELIEVERY.

5. Delievery may also be a forward delievery where goods are ~~that~~ not ready for at the ~~the~~ time of sale and will be delievered later on.



Explanation :-

1) Actual delivery means goods were delivered at the time of sale itself. Goods were taken away the buyer or his agent then and there. It means there should be no time gap between sale and delivery.

2° Forward delivery means a delivery in which goods go to the buyer after some time. It means order was placed but goods travel and its transportation takes time. It can also happen when goods are not ready and they are made ready.

3. Deemed delivery means ~~as~~ a situation in which physical goods do not travel but something happens by which delivery is perceived. It means delivery of goods

doesn't happen by goods but by something else. This something else can be one of the following :-

a. Keys or token or something else which work as symbol of something that is goods. When keys are delivered, keys become symbol of goods. When token is given, it becomes symbol of goods to be given soon. This is called symbolic Delivery

b. Documents of title of goods also work in same manner where once we receive documents, it becomes certain that we have become the owner. It is called constructive Delivery.

→ CONDITION AND WARRANTY

1. Sale can be done with condition or without condition to be fullfilled by buyer or seller.

2. If the sale is done without condition, it is called absolute sale.

3. If the sale is done with conditions there are two possibilities :-
   a. condition to be fullfilled before sale
   b. which means sale cannot take place if that condition is ~~not~~ unfulfilled.

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6 condition to be fulfilled after sale which means if it is not fulfilled, sale cannot stop because it is already completed.

4. condition to be fulfilled before is called condition and condition to be fulfilled after is called warranty.

5. condition & warranty has three differences :-

condition	Warranty.
1. This is fulfilled before sale.	1. This is fulfilled after sale.
2. This can stop sale if unfulfilled.	2. This cannot stop sale if unfulfil
3. condition can become a warranty as it can be ~~performed~~ postponed.	3. Warranty can neve become a condition as it can never be ~~performed~~ postponed.

6. condition which takes before can be postponed by mutual consent which means condition will react at the place of warranty. Sale cannot be cancelled if postponed condition is not fulfilled.

7. However warranty which generally takes place after the sale cannot be proposed because repairs cannot be done before sale.

8. It simply means warranty can never come in the position of condition.

→ LEJ THE BUYER BEWARE CAVEAT EMPTOR:

1. Generally sales takes place at the wish of buyer primarily.

2. Sale should take place after the consent of buyer because he will consume the goods & he will have to suffer if more goes wrong.

3. It is better to leave the choice on them to decide what fits there purpose or not.

4. If he makes a wrong selection, it is his risk and seller will not be held responsible.

5. This principal creates only one responsibility on the seller ie. to allow buyer to do examination before purchase.

6. If the buyer performs examination and even then he makes a wrong selection, it is his responsibility.

7. So ~~CAVEAT~~ CAVEAT EMPTOR means buyer is responsible.

→ EXCEPTION TO THE RULE OF CAVEAT EMPTOR.

Exception means the situation in which caveat Emptor cannot apply which means buyer will not be responsible for any wrong selection.

In simple words, all responsibilities go to seller in following cases :-

A. If he doesn't allow examination.

B. Manufacturing defect or technical defect

C. If goods do not match sample.

D. If goods do not match the description

E. If goods do not match the purpose already informed to seller.

F. If seller doesn't follow usage generally done in the market.

G If goods supplied are not usable.

H When seller does the fraud with the buyer.

→ IMPLIED CONDITIONS & IMPLIED WARRANTIES

1. Generally every condition must be communicated otherwise the other person cannot fulfil it. 2 However some conditions are so easy in nature that they are always fulfilled and should be fulfilled by everyone.

3. Such conditions need not to be expressed and must be fulfilled without saying anything. They are called implied conditions and they are as follows :-

A Seller has ownership.
B Goods must match with the sample.
C Goods must match with the description given
D Goods which are made for human consumption must be complete and wholesome.
E Goods must be fit for purpose for which it is purchased

↓ Implied warranty

4. When goods are sold and some warranty is given such as promise to do repairs.

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5. If such warranty was expressely promised, it will be just warranty. but if it is understood automatically, it is called implied warranty.

6. Following are the implied warranty:

A. Goods will become property of buyer
B Goods sold do not have any claim of third person.
C seller will disclose dangerous nature of goods to the buyer without demand.
D Goods will be repaired by manufactor even if not promised ~~by~~ specifically by seller.

→ SALE BY NON OWNER

1. Generally only the owner can sell the goods. because if a person is not the owner, he cannot make someone else owner.

2. If a non owner sells goods, the buyer will be in double loss. because his money went to seller and goods will go to true owner. and he will have nothing.

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3. Moral of the story is that only the owner should sell the goods but there is a practical problem that owner may authorise someone else to sell the goods, then it will become valid.

4. It means there are some cases in which even the non owner can sell. They are as follows :-

A Sale by Mercantile Agent.
B Sale by custom authorities when duty is not paid.
C Sale by one of the joint owners, subject to sharing of money.
D Sale by unpaid seller.
E Sale by seller if the goods are ~~still~~ still with the seller, specially when they are perishable.
F Sale by transporter when goods are ~~perishal~~ perishable.
G Sale by finder of goods if expense of searching the true owner becomes 2/3 of the value of the goods.
H Sale by person under voidable contract such as we bought a mobile phone which was defective, we complaint to the company and company accepted the complaint, company executive came to house to take it back, just before his arrival, ~~we~~ he sold it.

→ TRANSFER OF RISK.

1. Risk follows ownership.
2. It means owner will bear the risk.
3. When seller has completed all his duties, ownership transfers to buyer.
4. It means buyer becomes owner when seller is over with his duties.
5. Risk of Transit depends who is doing the delivery
6. If buyer is doing delivery himself, risk goes to him and if seller does delivery from his source it is his risk.
7. If goods are in public carrier, it is buyer's risk.

→ UNPAID SELLER

1. Unpaid seller is that seller who has not received complete payment on his goods.

2. If seller has received cheque or some other negotiable instrument which got dishonored, even then he becomes unpaid seller.

3. unpaid seller has two types of rights :-
   A. Right against goods.
   B. Right against buyer.

4. Right against Goods means ~~right~~ seller wants the goods back but right against buyer means seller needs punishment for buyer.

5 Right against goods are as follows:-
a Right of ~~Lein~~ Lien.
b Right of stoppage in Transit.
c Right of resale
~~d~~ ~~e~~

6. Right against buyer are as follows -
a suit for price
b suit for damages
c suit for interest
d suit for cancellation of contract

EXPLANAJION OF RIGHT.

Category A RIGHJ AGAJNST GJOODS

1. LIEN This right can be exercised only in case of Hire Purchase sale. When all installments are not paid, it becomes ~~against~~ a right of unpaid seller to forfeit the goods. This right is not possible in any other credit sale.

2. STOPPAGE IN TRANSIT It means if the goods are vehicle of seller or in the vehicle arranged by the seller, then only this right is possible. If the goods have been handed over to the

buyer's vehicle, they cannot be stopped in transit.

iii Re-Sale :- When goods are specially manufactured as per the requirement of buyer, and seller does not receive money for his products, he can sell the goods to someone else instead of the original buyer. It is not a rule that this applies only on specially manufactured item, but generally, it applies on them only.

CATEGORY RIGHT AGAINST BUYER

i. Suit for Price — When goods are already consumed by buyer or they are not in a position to take them back to seller, there is only one possibility ie. to file a case to demand price.

ii) Suit for damages — When unpaid seller suffers losses because buyer is not making payment, seller can claim compensation or damages for such late payment.

iii) Suit for interest — When unpaid seller has already informed buyer about such interest clause, only then it is possible that interest claim can be filed.

iv) Suit for cancellation of contract — When there is a contract of continuous supply for a continuous period of time, seller may request court to allow him to cancel such contract because buyer has not made payment of previous supplies.

AUCTION SALE

1. Auction can be done voluntarily by owner of goods or by government authorities in case of Non Repayment of Dues.

2. Auction is a system in which goods are sold to highest bidder.

3. seller can also bid if he has already informed about this at the beginning.

4. Auction notice is invitation to offer, Bid is offer and third hammer is acceptance.

5. It means sale is complete at the fall of third hammer.

6. Seller sometimes employees his agents to bid at the auction fraudleritly. They bid in order to increase the sale value. Such bidding is illegal and such fake false bidders are called Puffers.

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7. Sometimes two or more bidders agree with each other that they will not bid against each other. This private agreement is illegal and is called KNOCK OUT agreement.

8. Sometimes, one bidder wants that some other bidder does not bid at the auction. So he discourages this other bidder so much that he withdra his name from bidding. He discourages the other bidder by pointing out defects. This is called Damping. It is illegal.

MISCELLANEOUS POINTS.

1. Sale includes only goods and no service. but when service is includ it becomes a contract of labour. when we give goods for some processing it cannot be sale.

2. Sale and Gift both have transfer of ownership. but gift doesn't have price but sale has price.

3. Sale and hire purchase, both are sale but sale has immediate transfer of ownership and hire purchase transfer ownership only after complete payment

4. All tax changes shall be adjusted only in subsequent invoices. which means all invoices already made will remain at previous tax slab only.

5. sale may be done through sea routes which can be of three types :—

a. CIF contract — buyer pays for cost of goods, insurance and sea freight it means Price charged includes everything.

b. FOB. — This is Free on Board. When seller delivers goods on Board of ship, seller's duty ends at that time. After such Boarding, all risk belong to buyer. It means Freight and insurance are not added in the invoice.

c. EX — ship :- When invoice Price includes freight but not the insurance, this is called EXship. It is called midway between CIF and FOB.

	manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.
EFFECT OF TAX [Section 64A]	In the event of any tax being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulations as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such good tax- paid where tax was chargeable at that time. **(a)** if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition, and **(b)** if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer made deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

PRACTICE MANUAL

Fill in the blanks

1. 'Goods' under Sale of Goods Act is _____ property.

2. The contract of sale is an _____contract.

3. A warranty is a stipulation _____ to the main purpose.

4. In an agreement to sale, the transfer of property in the goods is to take place at a _____ time.

5. When the property is transferred to the buyer the goods are at the _____ risk whether the delivery has been made or not.

6. The seller of the goods is deemed to be _____ when the whole of the price has not been paid.

7. The unpaid seller has the right of _____ on the goods for the price while he is in possession of them.

8. The contract of sale is not _____ by the mere exercise by unpaid seller of his right of lien or stoppage in transit.

9. Where no time is fixed for the acceptance of goods, the measure of damage is the difference between the _____ price and the market price on the date of refusal by the buyer to accept the goods.

10. If the buyer or his agents obtains delivery of the goods before their arrival at the appointed destination, the transit is at an _____.

Choose the correct answer

1. Which one of the following is not the feature of 'agreement to sale'?
(a) It is an executor contract;
(b) Sales takes place for existing and specific goods;
(c) The seller can sue for damages only in case of breach by the buyer;
(d) It gives a right to the buyer against the seller to sue for damages.

2. Which one of the following is the subject matter of the contract?
(a) Existing or future goods;
(b) Goods perishing before making contract;
(c) Goods perishing before sale but after agreement to sell;
(d) Any of the above

3. Which is not the circumstance in which the transit of the goods is at end?
(a) If the buyer or his agents obtains delivery of the goods before their arrival at the appointed destination;
(b) Where the earlier or other bailee wrongfully refuses to deliver the goods to the buyer or his agents in that behalf; **(c)** If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them;
(d) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agents in that behalf.

4. Find out the right of the unpaid seller from the following-
(a) A lien on the goods for the price while he is in possession of them;
(b) A right of resale as limited by the Act;
(c) In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them.
(d) All the above.

5. Which one of the following is correct in regard to risk with property?
(a) Risk is involved on both the seller and the buyer;
(b) Where the delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault;
(c) Both (a) and (b);
(d) None of the above.

State whether TRUE or FALSE
1. In a contract of sale the property in the goods is transferred from the seller to the buyer.
2. In an 'agreement to sale' the buyer is entitled to recover the same from the Official Liquidator in case of insolvency of the seller.
3. A condition is a stipulation essential to the main purpose of the contract.
4. In a sale by sample an implied condition is that the bulk shall correspond with the sample in quality.
5. Unless otherwise agreed, the goods remain at the buyer's risk until the property is transferred to the buyer.
6. The seller of the goods is not bound to deliver them until the buyer applies for the delivery.
7. The buyer of the goods is not bound to accept the delivery of goods by installments unless otherwise agreed.
8. If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer cannot sue to seller damages for non delivery.
9. In an auction sale the sale may be noticed to be subject to a reserved or set up price.
10. The buyer is not to reject to goods where there is a breach of warranty by the seller.

Model Questions

1. What are the differences between 'contract of sale' and 'agreement to sale'.
2. When conditions are to be treated as warranty?
3. Under which circumstances the buyer can obtain the good title?
4. Explain the provisions relating to delivery of goods.
5. What are the rights of unpaid seller against the goods?
6. Give the picture of effects of stoppage of goods in transit.
7. Write a note on auction sale.
8. What are the remedies available for breach of warranty?
9. For what purposes suits may be filed by either of the parties for breach of contract?
10. Discuss the provisions on the re-selling of goods.

Answers:

Fill in the blank

1. Moveable;
2. Executed;
3. Collateral;
4. Future;
5. Buyer's
6. Unpaid seller;
7. Lien;
8. Rescinded;
9. Contract;
10. End.

Choose the correct answer
1. B;
2. D;
3. C;
4. D;
5. C

State whether TRUE or FALSE
1. TRUE;
2. FALSE;
3. TRUE;
4. TRUE;
5. FALSE;
6. TRUE;
7. TRUE;
8. FALSE;
9. TRUE;
10. FALSE.

MTP Question:

MTP June 2019
Question: 1 Discus Buyer's remedies against Seller for Breach of Contract.

Answer:
A buyer also has certain remedies against the seller who commits a breach. These are: 1. Suit for Damages for Non-Delivery [Section 57]- When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of nondelivery.

2. Suit for price- Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

3. Suit for specific performance [Section 58]- When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare paining, a unique piece of jewellery, etc.

4. Suit for Breach of Warranty [Section 59]- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may,

(a) set up the breach of warranty in extinction or diminution of the price payable by him, or

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

5. Repudiation of contract before the due date [Section 60]
Section 60 provides that 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 or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

6. Suit for interest
The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.
In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

MTP Dec 18
Question: 2 Explain the differences between Sale and Agreement to Sell

Answer:
Differences between Sale and Agreement to Sell

Basis	Sale	Agreement to sell
Transfer of property	The property in the goods passes from buyer to seller	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled
Type of Contract	It is an executed contract	It is an executor contract
Types of goods	Sales take place only for existing and specific goods	Future and contingent goods
Risk of Loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in possession of the seller	If the goods are destroyed, the loss falls on the seller despite the goods are in possession of the buyer.
Breach of contract	The seller can sue the buyer for the price and for damages in case of breach by the buyer	The seller can sue for damages only, in case of breach by the buyer
General and Particular property	It gives the buyer a right to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against seller to sue for damages
Insolvency of the buyer	In absence of lien over the goods the seller is to return the goods to the official receiver or the assignee. He is entitled to get the dividend declared by the official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of seller	The buyer becoming the owner is entitled to recover the same from the official receiver or assignee.	The buyer cannot claim the goods but may receive the dividend declared by the official receiver or assignee.

Question: 3 K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than `100, 000. The agent sells the car for `75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.

Answer:
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 :
(a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
(b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
(c) The buyer should act in good faith.
(d) 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, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in Folkes v. King

MTP June 18

Question:4 X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

Answer:

This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – ―if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell‖.

The given problem fulfills all such requirements. X, Y and Z are joint owners of the bus. Y had sole possession of it. In such a case if P has purchased the bus from Y in good faith without notice at the time of sale that Y had no authority to sell, then P acquires good title and becomes full owner although Y was not the full owner.

Question:5 Transfer of title by non-owners State the exceptions to it.

Answer:

Transfer of title by non-owners - Exceptions As per section 27 of the Sale of Goods Act where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner.

The Sale of Goods Act, 1930 provides the following exceptions to this doctrine which seeks to protect the interest of bona fide buyers:

1. Sale by a mercantile agent: If a mercantile agent is authorized by the owner of the goods sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfilment of the following conditions:-

- he person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner
- The person must sell the goods while acting in the ordinary course of business
- The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods**.**

2. Transfer of title by Estoppels

This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

3**. Sale by a joint owner**

It there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception following conditions must be fulfilled.

- One of the several owners must be in sole possession of the goods.
- The joint owner must have permission of co-owners.
- The buyer must purchase goods in good faith.
- The buyer should not have notice regarding the matter that the seller has no authority to sell.

4. Sale by person in possession under voidable contract
According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5. Sale by seller in possession after sale
Under Section 30 (1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6. Sale by buyer in possession after sale
Under Section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods can and resells the goods to a bona fide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7. Sale by an unpaid seller
If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8. Exception under other Acts
According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-
(i) Under Section 169 of the Contract Act, a finder of the goods has the right to sell.
(ii) Under Section 176 of the Contract Act, a pawnee of goods has the right to sell the goods pawned subject to satisfying some conditions.
(iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for duties remaining unpaid etc.
(iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

MTP Dec 17
Question: 6 X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

Answer:
This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – "if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell".

The given problem fulfills all such requirements. X, Y and Z are joint owners of the bus. Y had sole possession of it. In such a case if P has purchased the bus from Y in good faith without notice at the time of sale that Y had no authority to sell, then P acquires good title and becomes full owner although Y was not the full owner**.**

MTP June 17
Question:7 K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than `100, 000. The agent sells the car for `75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.

Answer:
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 :

(a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
(b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
(c) The buyer should act in good faith.
(d) 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, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in Folkes v. King.

MTP June 17
Question: 8 Explain the differences between Sale and Agreement to Sell

Answer:
As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. 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.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Suggested Dec 17
Question: 9 What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule?

Answer:
Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: -Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale

The rule of caveat emptor does not apply in the following cases:
1. Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).

2. Sale under a patent or trade name: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).

3. Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

4. Usage of trade: An implied warranty/or condition as to qualify or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)). 5. Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

(b) Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

Revisionary Question:

Revisionary Dec 2018
Question:10 Write a short note on auction sale.

Answer:

Auction sale

Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;

- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction;

- where the sale is not notified to the 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;

- the sale may be notified to be subject to a reserved or set up price;

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

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Question:11 Justify the following:
On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:

A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ` 5000 which was agreed to by 'Sham'.

Question:12 On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:
A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Question:13 Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?

Answer:
Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

Question:14 M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at `300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to `350 each. Examine the right of M/s. Retailer.

Answer:
In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sec. 31 & 32);
(2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
(4) To sue the seller for specific performance;
(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
(6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Retailer can exercise any of his rights discussed above

Revisionary June 2018
Question: 15 Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed?

Answer:

Agent's Authority in an emergency:

As per section 189 of the sale of Goods Act, 1930, An agent has the authority in an emergency to do all such acts as man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses**.**

Here the agent acts in an emergency and act as a man of ordinary prudence. In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.

Question: 16 Differentiate between a contract of Sale and an Agreement to sell.

Answer:

Basis	Contract of Sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract	It is an executory contract
Type of goods	Sales takes place only for existing and specific goods	Future and contingent goods
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Question: 17 On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ` 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ` 10,000, Can Mr. Ram obtain the painting at ` 5,000 which was agreed to by Mr. Sham?

Answer:
A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ` 5000 which was agreed to by 'Sham'.

Question: 18 Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relating on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram?

Answer:
In this the contract is voidable at the option of Ram, he may avoid the contract. He may insist on its being carried out and the mortgaged debt redeemed.

Question: 19 Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?

Answer:
Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

Question: 20 Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Railway Station. The Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram has any right as an unpaid seller?

Answer:
Mr. Ram has lost his right of stoppage in transit; the intimation by the station master that the goods are held at the Station at Mr. Sham's rights has transformed the position of station master into a bailee of Mr. Sham instead of Mr. Ram. The transit has thus come to an end.

An unpaid seller can stop the goods in transit in the event of buyers' insolvency. The transit being over, the right is thus lost.

Question: 21 M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at `300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to `350 each. Examine the right of M/s. Retailer.

Answer:
In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sec. 31 & 32);

(2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;

(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);

(4) To sue the seller for specific performance;

(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);

(6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

Question: 22 Exceptions to 'Risk Prima Facie passes with the property'

Answer:
The rule regarding risk passes with the property enshrined in section 26 is subject to the following exceptions:

(a) This rule of 26 will apply only if there is no agreement to the contrary. It is permissible for the parties to provide in the agreement that although the property does not pass, the risk passes and they may fix the point of time when it is to pass.

(b) Where delivery has been delayed through the fault of either party the buyer or the seller, the goods are at the risk of the party at fault as regards any loss which might not have been occurred but for such loss. The goods are at the risk of the party who is at fault in delay of delivery.

(c) If there is a custom in that particular trade that the risk does not pass with property, in such a case the risk will pass as per the custom.

(d) Risk and property may be separated by agreement between the parties. Section 40 of the Act also provides that where the seller agrees to deliver the goods at his own risk at a distant place from where they are, the buyer shall unless otherwise agreed, not take any risk of deterioration in the goods incidental to the transit.

Workbook Question:

Question: 23 State the Difference between contract of sale and agreement to sell.

Answer:

Basis	Contract of sale	Agreement to sell
1.Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
2.Type of contract	It is an executed contract	It is an executory contract
3.Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
4.Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
5.Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
6.General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
7.Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Question: 24 What is contract of sale? Explain in brief the essentials of a Contract of Sale.

Answer:
According to section 4(1) "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

Essentials of a Contract of Sale
The following are thus the essentials of a contract of sale of goods:
(1) Bilateral contract: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.

(2) Transfer of property: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

(3) Goods: The subject matter must be some goods.

(4) Price or money consideration: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

All essential elements of a valid contract must be present in a contract of sale.

Question: 25 Define the term "Condition and Warranty" and explain the differences.

Answer:
Section 12(1) provides that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition [Section 12(2)]
A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.

A condition in a contract of sale of goods is of fundamental nature for breach of which the buyer can repudiate the contract.

Warranty [Section 12(3)]
A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Question: 26 Differences between Condition and Warranty

Answer:

Sl. No.	Condition	Warranty
1.	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2.	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
3.	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty, con not be treated as a breach of a condition.

Question: 27 State the remedies Available to the Buyer for Breach of Conditions

Answer:
(a) Affected party may claim refund of price and reject the goods;

(b) Elect to treat breach of condition as breach of warranty and claim damages or compensation;

(c) When the affected parties treat breach of condition as breach of warranty he cannot repudiate the contract but claim damages only;

(d) No remedy is available when the fulfillment of condition is excused by law by means of impossibility or otherwise 13(3).

Question: 28 Explain different types of implied warranties

Answer:
Implied warranties are of following types, which are as under**:**

(i) Warranty of quiet possession [Sec.14 (b)]
If the buyer in any way is disturbed from enjoying the quiet possession of goods purchased because of seller‟s defective title, the buyer can claim damages from seller. It is a warranty that neither the seller shall not nor shall anybody claiming under a superior title or under his authority interfere with the quite enjoyment of the superior title or under his authority interfere with the quite enjoyment of buyer.

(ii) Warranty of freedom from encumbrances [Sec.14(c)]
The buyer is also entitled to additional warranty that the goods are free from any charge or right of any third party, not declared or known to the buyer. It is presumed that the goods are free of third parties charges if it is otherwise the buyer is entitled to claim damages from the seller.

(iii) Warranty as to quality or fitness by usage of trade:
An implied warranty as to quality or fitness for a particular purpose may be annexed by usage of trade.

(iv) Warranty to disclose dangerous nature of goods:
Where a person sell goods knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger he must be warn the buyer of the probable danger, otherwise he will be liable in damages.

Question: 29 What do you mean by doctrine of "caveat emptor"? State its exceptions.

Answer:
The term "caveat emptor" is a Latin word which means "let the buyer beware". This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller‟s duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward v. Hobbs, (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer‟s own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer‟s duty to satisfy him regarding the health of the pigs.

Exceptions: Section 16 lays down the following exceptions to the doctrine of Caveat Emptor:

(1) Where the seller makes a false representation and the buyer relies on it.

(2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.

(3) When the buyer, relying upon the skill and judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.

(4) Where goods are bought by description from a seller who deals in goods of that description

Question: 30 What do you mean by "delivery" in Sale of goods act 1930. What is part delivery? State the rules for the delivery as per act

Answer:
Delivery Section 33 provides that the delivery of goods sold may be made-

- by doing anything which the parties agree; or

• which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf;

Section 35 provides that the seller of goods is not bound to deliver them until the buyer applies for the delivery apart from any express contract.

Part delivery
Section 34 deals with the effect of part delivery. A delivery of part of goods, in progress of the delivery of the whole, has the same effect as a delivery of the whole for the purpose of passing the property in such goods. If a delivery of part of the goods is done with an intention of severing it from the whole, then it does not operate as a delivery to the reminder.

Rules for the delivery
Section 36 provides rules for the delivery as detailed below:

• Apart from any 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 not then in existence, at the place at which they are manufactured or produced;

• Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time;

• Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless until such third person acknowledges to the buyer that he holds the goods on his behalf; This shall not affect the operation of the issue or transfer of any document of title to the goods; Demand or tender of delivery may be treated as ineffectual unless made at reasonable hour;

• Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller

Question: 31 What do you mean by Unpaid Seller? Explain the rights of unpaid seller against the Goods.

Answer:
Unpaid seller:
The seller of the goods is deemed to be „unpaid seller" within the meaning of this Act-

• when the whole of the price has not been paid or tendered;

• when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instruments or otherwise;

Section 45(2) defines the term „seller" as including any person who is in the position of a seller as an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid, is directly responsible for the price.
Rights of an Unpaid Seller against the Goods
An unpaid seller"s right against the goods are:
(a) A lien or right of retention
(b) The right of stoppage in transit.
(c) The right of resale.
(d) The right to withhold delivery

(a) Right of Lien (Sections 47-49 and 54) : An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where the:
(i) goods have been sold without stipulation as to credit; or
(ii) goods have been sold on credit, but the term of credit has expired; or
(iii) buyer becomes insolvent.
The lien depends on physical possession. The seller‟s lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.
A lien is lost –
(i) When the seller 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;

(iii) By waiver of his lien by the unpaid seller

(b) Stoppage in transit (Sections 50-52): The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller when the –
(i) buyer becomes insolvent; and

(ii) goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:
(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.
The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller‟s claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller‟s right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller‟s right.

(c) Right of re-sale (Section 54):
The unpaid seller may re-sell where the –

(i) goods are perishable;

(ii) right is expressly reserved in the contract;

(iii) in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d) Rights to withhold Delivery:
If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit.

Question: 32 Write a short note on auction sale

Answer:
Auction sale
Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;

- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction;

- where the sale is not notified to the 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;

- the sale may be notified to be subject to a reserved or set up price;

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

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Scanner Question:

Question: 33
2008- Dec Write explanatory notes on:

(i) Rights of the unpaid seller; ; **(4 marks)**
(ii) Sale and agreement to sale; **(4 marks)**

Answer:

(i) Rights of the unpaid seller : The credit sales are indispensable to any business and non payment of debts is an inseparable part of credit sales. The seller who has not received full payment against the goods sold by him must have certain rights and remedies to recover or reduce the loss being suffered by him. The Sale of Goods Act has elaborate provisions regarding the rights of unpaid seller.
By virtue of **Section 45,** the seller of goods is unpaid seller (i) when the whole price has not been paid or tendered (ii) when the legal instrument received by him as conditional payment has not been honoured.
An unpaid seller has the following rights as per the Sale of Goods Act.

Right of lien (lien means control, right to possess, right to retain) (Section 47): The unpaid seller has a lien on the goods for the price while he is in possession, until the payment or tender of the price. A lien is a right to retain possession of goods until payment of the price. He is entitled to lien in the following three cases, namely:
(i) Where goods have been sold without any condition of credit; or
(ii) Where goods have been sold on credit but the terms of credit has expired, or
(iii) Where the buyer becomes insolvent.

The seller can exercise the lien although he holds the goods as the agent or bailee for the buyer.

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 argument to waive the lien.

Right of Stoppage in transit (Section 50): The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of buyer,
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 of provisions of the Act.

Right of re-sale (Section 51) : When the goods are of a perishable nature, the unpaid seller may re-sell the goods without giving any notice to the buyer.

(ii)

S.N.	Sale	Agreement to sale
1	Property in goods or title of goods is transferred immediately to the buyer.	Property in goods or title of goods is to be transferred to buyer at a future date after fulfilling some conditions.
2	By the yery nature, It always refers to the existing and specific goods.	It refers to existing as well as future goods.
3	If price is not paid, the seller can re-sale, stop the goods in transit.	If price is not paid, the seller has sole option of filing a suit for damages, because the possession of goods is already with the buyer.
4	Relates to present sale of present goods.	Relates to present or future sale of present or future goods.
5	Buyer becomes owner and the risk is associated with the owner.	Ownership is with the seller, the risk is associated with the seller even if the goods are in possession of buyer.
6	If the buyer has paid the price and the seller becomes insolvent thereafter, the buyer can claim the goods from the official receiver.	In such cases, the buyer cannot claim the goods but can only claim relief related to money paid by him.
7	If the ownership of goods is transferred to the buyer before paying the price, and the buyer becomes insolvent, the seller has to deliver the goods to the official receiver.	In such case, the seller can refuse to deliver the goods to the official receiver.

Question: 34 2009 - June
Seller's lien. **(4 marks)**

Answer:
Sellers lien : The unpaid seller of goods who is in possession of goods is entitled to retain possession of such goods until payment or tender of the price in the following cases viz.
(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 had expired.
(c) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as an agent or bailee for the buyer.

Question: 35 2009- Dec

Termination of lien; (4 marks)

Answer:

Termination of Lien: Lien has not been specified in the question. It is taken as lien of unpaid seller. The unpaid seller loses his lien on the following conditions :
(i) when he himself agrees to terminate or waive his lien for example when he extends the period of credit;
(ii) When the buyer or. his agent lawfully obtains possession of goods
(iii) when- the seller unconditionally delivers the goods as per directions of the buyer. It should be noted that if the seller has obtained a decree for the price of goods, it does not mean that his lien is lost.

Question: 36 2010- June

Right of resale (4 marks)

Answer:

Right of Resale :
• If the seller has not received the payment from the buyer, he is called unpaid seller.
• The unpaid seller has the right to resell those goods provided he gives proper notice to the buyer in this regard.
• The buyer should be given reasonable time to pay the balance amount and if he fails to pay, unpaid seller may resell the goods and he also has right to recover the damages occurred to him by breach of contract, from the buyer.
• If such notice has not been given, the unpaid seller has no right to recover the damages from the original buyer nor he (unpaid seller) has any right over the profit arising out of such sale.
• The second buyer gets the good title after such resale. The seller can retain any profit on account of such sale.

Question: 37 2010- Dec

Exceptions to 'implied condition as to quality or fitness'. (4 marks)

Answer:

Exceptions to 'implied conditions as to quality and fitness':
(i) If the buyer has examined goods, there shall be no implied conditions.

(ii) If the buyer has examined goods, he should be vigilant and all defects should be noted by him during the examination. There shall be no implied conditions for such defects .which can be noticed with such examination.

(iii) 'If the goods bear trade name of any company, there shall be no implied conditions on the part of the seller as to quality and fitness.

Question: 38 2011- June

Termination of lien (Sale of Goods Act) (4 marks)

Answer:

Please refer 2009 - Dec [3] (a) (i) on page no. 142

Question: 39 2011- Dec
Transfer of Property of Unascertained Goods; (4 marks)
Answer
Unascertained goods or future goods are manufactured as per the description decided by the seller and the buyer. The buyer inspects the manufactured goods and selects goods of his choice and keeps them separately. This process of selection of goods is also called ascertainment. As per Section 18 of sale of goods act, the property or right of goods passes to the buyer only after he has ascertained the manufactured good.

Question: 40 2012 - June

(i) Future Goods; (4 marks)

Answer:

Future Goods:

• According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods.
• It is expressed in the Latin phrase as ' Nemo dat quod non habet.' which means that "none can give who does not himself possess."
• There is one exception to this rule in case of future goods.
• Future goods mean goods to be manufactured or produced or acquired by the seller after the making of contract of sale.
• As rule, any person may sell or offer for sale goods of which he is not the owner at present, but which he expects to acquire in due course of time.
• A contract to sell oil not yet extracted from the refineries owned by him or not yet obtained from pressing of seeds in his possession is a contract for sale of future goods.
• Any contract for present sale of future goods, constitutes as an agreement to sell.

Specific Goods:

• These are the goods which are specifically identified and agreed upon at the time when contract of sale is drawn and executed.
• It is essential that the goods must be identified and separated from the other goods at the time when the contract of sale is made.
• Merely an identification of goods does not make it specific goods.
• For example, in a case of sale of one horse out of a lot of 25 horses, goods shall be specific if the horse is selected before the contract of sale is made.
• Here it is important to note that all horses are horses but they cannot be ■ exactly similar to each other. Therefore, it is imperative to select the horse out of the lot as specific goods.

Question: 41 2012- **Dec Termination of lien of unpaid Seller**. **(4 marks)**

Answer:

Please refer 2009 - Dec [3] (a) (i) on page no. 142

Question: 42 2013- June

Damping (Sale of Goods Act) (4 marks)

Answer:

Damping: Some bidders may do something to discourage the other bidders for bidding. Damping is illegal practice because it is intended to reduce the bidding price. The seller or the auctioneer can withdraw goods from auction if he smells of damping in the auction sale.

Question: 43 2010- Dec

Distinguish between 'condition' and 'warranty' (Sale of Goods Act). (4 marks)

Answer:

Distinguish between Condition and Warranty

Condition	Warranty
Contract becomes invalid and void if condition is not satisfied.	Contract remains valid even if warranty is not satisfied.
It is essential for the contract.	It is not essential but desirable in the contract. It is collateral (additional security) to the main contract.
Condition can be treated as warranty by the buyer.	Warranty can not be treated as condition by the buyer.
It can be waived (ignored) by law if found impossible.	It can also be waived by law if found impossible.
In dispute, what is condition, is decided by interpretation of the term.	In dispute, what is warranty, is decided by interpretation of the term.

Question: 44 2008- **Dec**

What will be the consequences when goods are sold by a person not the Owner and without Owner's consent. **(4 marks)**

Answer:
The buyer gets no title of goods because the seller has no title of goods sold by him. However, if the owner has by his conduct not denied the seller's authority to sell, the sale would be treated as valid.

Question: 45 2009- June

An hirer, who obtains possession of a car from its owner under a hire purchase agreement, sells the car to a buyer who buys in good faith and without notice of the right of the owner. The buyer gets good title to the car. **(2 marks)**

Answer:
According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ' Nemo dat quod qui non habet.' which means that "none can give who does not himself possess." A hirer is not the owner of the goods and does not posses title of the goods. Since sale involves transfer of ownership and a hirer, being a non-owner, cannot transfer ownership in the given case, buyer shall not get a good title.

Question: 46 2009- June

(i) In an auction sale, a bid once made can be withdrawn by the bidder. Comment citing rules. **(2marks)**

(ii) Stipulation as to time of payment is deemed to be essence of a contract of Sale. Comment. **(2marks)**

(iii) When property passes to the buyer under 'goods on approval' or 'on sale or return'? **(2marks)**

Answer:
(i) In the case of sale by Auction, the sale is complete only when the auctioneer announces its completions by the fall of a hammer or in other customary manner and until such announcement is made any bidder rrYay retract/withdraw his bid.

(ii) Unless the terms of the contract show a different view and intention, stipulation as to time of payment is not deemed to be of essence of a contract of sale. Whether any other stipulation as to time of the essence of the contract or not, depends on the terms of the contract. If the time and manner of payment have been outlined in the contract, time of payment becomes essence of contract.

(iii) 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 he signifies his approval or acceptance to the seller.

(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 goods on the expiration such time, and if no time have been fixed on the expiration of reasonable time.

Question: 47 2010- June

Sale and Agreement to sale are same. **(2 marks)**

Answer:
No. They are not same. In sale the consideration moves with the sale at the present date while in agreement to sale the consideration will move at a future date when the sale would take place.

Question: 48 2010- June

(i) An exchange of goods for goods is a sale. Comment with Rule position. **(2 marks)**

(ii) When sale is complete in an Auction sale. **(2 marks)**

Answer:
(i) Exchange of goods with goods is not sale, but it is called barter exchange. Sale is defined in Sale of Goods Act as transfer of property in goods for a price.

(ii) Auction sale is complete when the auctioneer announces the completion in any formal manner e.g. by falling the hammer.

Question: 49 2011- June

"Only the owner of goods can transfer a good title-none else" but there are some exception. Can you cite at least 2 such exceptions with detailed provision. (4 marks)

Answer:
• According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ***'Nemo dat quod qui non habet.'*** which means that "none can give who does not himself possess."

• There is one exception to this rule in case of future goods. Future goods means goods to be manufactured or produced or acquired by the seller after the making of contract of sale.

• As rule, any person may sell or offer for sale goods of which he is not the owner at present, but which he expects to acquire in due course of time.

• A contract to sell oil not yet extracted from the refineries owned by him or not yet obtained from pressing of seeds in his possession is a contract for sale of future goods. Any contract for present sale of future goods, constitutes as an agreement to sell. There are many examples, some of them are given below:

(i) **Sale by mercantile agent** : (mercantile means commercial or trade). The commercial agent of owner can sell the goods on behalf of owner though the commercial agent is not the owner of goods. The buyer gets valid title on goods purchased from agent.

(ii) **Sale by one of the joint owners** : The goods can be sold by any of joint owners provided that the joint owners give permission in this regard.

(iii) Sale by seller who is in possession of goods after sale.

(iv) Sale by unpaid seller, sale by finder of goods, sale by official receiver or liquidator.

(v) Sale by pawnee,

Question: 50 2011- June

What are the essentials of a contract of Sale? (4 marks)

Answer:
Essentials of contract of sale:
1. There must be at least two parties - buyer and seller. Since a person can not buy from and sell to himself.

2. Transfer or Agreement to transfer, the ownership of goods.

3. Subject matter of goods must necessarily be goods.

4. The consideration is price i.e. money. Goods received against goods is not a sale but it is called barter.

5. A contract of sale may be unconditional or conditional.

6. All other essentials of a valid contract must be present i.e. parties of contract must be competent to enter into contract, consent of parties shall be free, object shall be lawful and so on.

Question: 51 2012- June

A seller may deliver goods to a carrier with a right of disposal. Comment. (2 marks)

Answer:

Yes, the seller may do so. In such case, he does not lose the right of lien **u/s 46(1) (a) of The Sale of Goods Act, 1930,** even though the seller has parted with the possession of goods.

Question: 52 2012- Dec

In an auction sale a bid once given cannot be withdrawn. Do you agree? (2 **marks)**

Answer:

Any bid once made can be withdrawn at any time before the completion of the auction. When auction is completed and finished, the final bid which is accepted cannot be withdrawn.

Question: 53 2012- Dec

A non owner cannot make a valid Transfer of Goods. (4 marks)

Answer with Rule position.

Answer :

Please refer 2011 - June [2] (g) on page no. 148

Question: 54 2013- June

Parties to a contract of sale can get the price of goods fixed by third parties. (2 marks)

Answer:

Agreement to sell at valuation:

Sometimes the goods to be sold is such that either the seller or the buyer is not able to determine and decide its price.

• In such cases both the parties make a contract that value of goods will be determined or valued by a third party who is expert in such field.

• Thus there is an agreement to sell goods on the terms that the price is to be fixed by valuation of third party.

• The third party should have no interest in the contract except for fixation of price.

• If that third party does not fix the price because of any reason of its own, the contract becomes void for non fixation of price consideration.

• If the buyer has taken or used any part of goods or the whole goods, the buyer should pay a reasonable price, what is reasonable price will depend on facts and figures of each case.

Question: 55 2013- June

Transfer of Title to goods takes place when it is intended. Whether it is correct? (2 marks)

Answer:

• It should be noted that transfer of property in goods is distinct and different from delivery or possession of goods. The property may pass from the seller to buyer even without delivery of goods.

• It is elementary (basic) law of contract that parties may fix the time when the property (ownership) in goods shall be deemed to have passed.

• It may be at the time of delivery of goods, or it may be at the time making final payment or even at the time of making of goods.

• The seller can sue for price only when the property in goods has passed to the buyer.

Question: 56 2013- Dec
In case of auction sales, auctioneers has some implied obligations. State such obligations. (4 marks)

Answer:
Yes, obligations are:

(i) He has authority to sale goods.

(ii) He warrants that he does not know any defects in the title of the principal.

(iii) He undertakes to give possession of the goods against price paid.

(iv) He guarantees quiet possession of goods by the purchases.

Question: 57 2013- Dec
A non owner can convey a better title to the bonafide purchaser of goods for value in certain cases. List out those cases. (6 marks)

Answer:
Sale by person not the owner:
• Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded the seller's authority from denying the seller's authority to sell.

• Generally the owner alone can transfer property in goods "nemo dat quod non habet" means that no one can give what he himself does not have. '

• It means a non owner cannot make valid transfer of property in goods.

• If the title of the seller is defective, the buyer's title will also be subject to. same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods.

• Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the following exceptions to this doctrine which seeks to protect the interest of bonafide buyers.

(i)	**Sale by mercantile agent (Section 27)**	Where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the sale, provided that the buyer acts in good faith and he has not noticed at the time of the contract of sale that the seller has no authority to sell.
(ii)	**Sale by one of joint owners (Section 28)**	If one of several joint owners of goods has the sole possession of the goods by permission of the co-owners, the property (means ownership) in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale noticed that the seller has no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.
(iii)	**Sale by person in possession under voidable contract (Section 29)**	When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale the buyer acquires a good title to the goods, provided he buys

		them in good faith and without notice of the seller's defect of title.
(iv)	**Seller or buyer in possession after sale (Section 30)**	Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery to transfer were expressly authorized by the owner of the goods to make the same.
(v)	**Sale by estoppel (Section 27)**	Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is estopped • from denying the fact afterwards. The buyer thus gets a better title than the seller.
(vi)	**Sale by an unpaid seller after exercising his right of lien or stoppage in transit**	In addition to the exceptions discussed above which are provided in various sections of the Sale of Goods Act, the following exceptions are provided in other Acts like Contract Act, Civil Procedure Code etc.
	(a) Sale by a finder of lost goods	Under Section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amounts to 2/3rd of its value.
	(b) S a I e by pawnee	Under Section 176 of the Indian Contract Act, a pawnee can sell the goods under certain circumstances with due notice to the owner.
	(c) S a I e by official receiver or assignee	In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.
	(d) Execution of Sale	Under order 21 of the Civil Procedure Code, officer of Court may sell goods and convey good title to the buyer inspite of the fact that the officer of Court is not the true owner of the goods.

Question: 58 2014 June

Under what circumstances breach of condition is treated as breach of warranty under the provisions of The Sale of Goods Act, 1930? (4 marks)

Answer:

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

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
(iv) Where the fulfillment of any condition or warranty is excused by law, by reason of impossibility or otherwise.

Question: 59 2014- Dec
Abhishek contracts to sell Bhusan, by showing sample, certain quantity of tea described as 'Best quality Darjeeling tea. The tea when delivered matches with the sample, but it is not Darjeeling tea. Referring to the provisions of Sale of Goods Act,-1930 advise the remedy, if any, available to Bhusan. (3 marks)

Answer:
Sale by sample is described in Sec. 17 of the Sale of Goods Act, 1930.
A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
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.
• That they shall have a reasonable opportunity of comparing the bulk with the sample.
• That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the goods.
In a contract for sale of brand by sample, Bhusan is entitled to return the tea and claim refund of money as there is breach of condition.

Question: 60 2016 - June
State your views on the following:

(a) Consideration for sale of goods must be in terms of money.
(b) In an auction sale, a bid once made can not be withdrawn by the bidder. (2 marks each)

Answer:
(a) **Correct:** It is one of the essentials of the contract of sale, that price must be paid in terms of money.

(b) **Incorrect:** The bidder can withdraw his bid any time before the fail of the hammer i.e., completion of sale.

Question: 61 2016- Dec
What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected. (4 marks)

Answer:
Destruction of Goods-Consequences:

(i) **As per 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. The rule is based on ground of mutual mistake or impossibility of performance, which is one of the essentials of a valid contract.

(ii) **Section 8** provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
It may, however, be noted that **Section 7 and 8** apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such "goods" in the possession of the seller will not relieve him of his obligation to deliver the goods.

Question: 62 2017- Dec
What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule? (8 marks)

Answer:
As per Sec. 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of CAVEAT EMPTOR which means 'let the buyer beware'. However, there are some exceptions to this which are as under:

(a) Where the buyer, expressly or by implication, makes it known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably be fit for such purpose. However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.

(b) 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. However, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.

In order to apply the implied condition as to merchantability the following requirements must be satisfied.

(i) the seller should be dealer in goods of that description;

(ii) the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.
It may be noted the term merchantability has not been defined in the Act. As per English Sale of Goods Act, goods of any kind are merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are commonly brought as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances.

(c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In some cases the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased. For example if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.

(d) An express warranty or conditions does not negative a warranty or condition implied by this Act unless inconsistent therewit

Question: 63 2009- June
Mr. A.agreed to purchase 100 bales of cotton from 'B' from his large stock. 'A' sent his men to take delivery of cotton. On completion of packing of only 70 bales, there was accidental fire and entire stock including packed 70 bales were destroyed. There was no Insurance cover. Who will bear the loss? (2 marks)

(i) State the rights and liabilities of 'A' in the following cases :

(ii) An Auctioneer advertised in a newspaper that a sale of office furniture will be held at Kolkata on 29.11.2009. 'A' came from New Delhi to buy the furniture but the auction was cancelled. Whether 'A' can a file a suit against the auctioneer for his loss of time and cost. (2 marks)

Answer:
(i) Since 70 bales were ascertained and appropriated, property in those 70 bales were transferred to A. Hence A is liable for 70 bales only and B is liable for remaining stock.
(ii) A can not file a suit against the Auctioneer for his loss of time and cost because the Advertisement was merely a declaration of intention to hold Auction. Advertisement is not an offer but it is an invitation to offer. Moreover there was no agreement between A and the party.

Question:64 2009- Dec
Mr. Sham agrees to sell Mr. Ram 10 bags of wheat out of 100 bags lying in his godown for 10,000. Wheat is completely destroyed by fire. Mr. Ram cannot compel Mr. Sham to supply wheat as per contract. (2 marks)

Answer:

True: Mr. Sham cannot supply the wheat as it is destroyed and the subject matter of agreement is no longer in existence. Moreover Mr. Ram cannot compel Mr. Sham to supply the agreemented specific goods as the goods are destroyed without any fault on the part of seller.

Question:65 2009- Dec
Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Rly. Station, Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became ihsolvent. Has Mr. Ram has any right as an unpaid seller? **(2 marks)**

Answer:
• The goods have reached its destination and are in the possession of station master who is supposed to deliver goods to Mr. Sham.

• The station master is bailee of Mr. Sham the buyer and not of Mr. Ram the seller.

• An unpaid seller can stop the goods in transit in the event of buyer's insolvency.

• This right has been lost by the seller as the goods are no longer in transit.

Question:66 2009 - Dec
Mr. Ram gives some diamonds to Mr. Sham on "sale or return" basis. On the same day, Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will bear the loss? (2 marks)

Answer:
While giving diamonds to Mr. Jadu, Mr. Sham behaved like owner of diamond?. As he becomes the owner, he should bear the loss and make payments to Ram. Loosing of diamonds by Jadu does not establish his ownership, hence he will not bear .the loss.

Question:67 2010- June
Mr. Roy give Mr. Ghosh on hire, a horse for his own riding but Mr. Ghosh drives the horse in his carriage. What action Mr. Roy can take? (2 marks)

Answer:
This is contract of bailment. Mr. Ghosh has not followed the conditions of bailment and his action to use the horse in his carriage in not as per the terms of bailment. It is now up to Mr. Roy to continue with or terminate the bailment.

Question: 68 2010- Dec
Mr. X accepted certain Goods of Mr. Y for delivery at Durgapur. When the driver of the truck which was carrying the Goods went for lunch, the Goods were stolen. There was no insurance. Mr. Y has no remedy.
(2 marks)

Answer:
Mr. X is bound to deliver goods at Durgapur or return it back to Y. He does neither hence Y can claim damages from X. Y can file a suit against X. Goods were stolen because of fault of X as he did not make arrangements for its safety when driver went for food. To get the goods insured was also part of duty of X when he accepted the contract with Y. Y has all rights to claim damages.

Question:69 2010- Dec
Mr. Bose settled the price after selecting two chairs. He arranges to take delivery of chairs next day and agrees to pay next month, i Said chairs were destroyed by fire before delivery. Seller demanded the price. Mr. Bose refused. State legal position. **(2 marks)**

Answer:
Mr. Bose should pay the price. When the goods were specified by Bose and lprice was also settled, the contract was complete and the title of chairs was Ipassed to Bose from the seller. Those chairs were kept as reserved for Bose land the seller was simply keeping the custody of the chairs on behalf of |Bose. The seller is entitled to demand and receive the price of chairs.

Question:70 2010 - **Dec**
Ramen sold 50 Kg. of rice to Khagen who paid by cheque and Ramen gave the delivery order to Khagen. Khagen resold such rice to Bhaben who purchased on good faith and for consideration. Khagen's cheque was dishonoured. Ramen refused to deliver rice to Bhaben on the plea of non-payment. Advise Bhaben.
(2 **marks)**

Answer:
According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as ' Nemo dat quod qui non habet.' which means that "none can give who does not himself possess." Bhaben cannot claim delivery of goods because Khagen cannot sell what he does not have. Khagen right on rice is invalid because his cheque was dishonoured and he was not owner of rice when he sold the rice to Bhaben.

Question:71 2011- Dec
A stock of bark was sold at an agreed price per tonne. The bark was to be weighed by the agent of seller as also by the buyer for ascertainment of price. A part of the bark was weighed and carried away by the buyer's agent on 12.11.11. On 13.11.11, the remaining stock was swept away by flood. Who will bear the loss and why?
(2 **marks)**

Answer:
Goods must be ascertained for property in goods to be transferred to buyer. (Sec. 18 of Sale of Goods Act, 1930). The loss of the remaining stock be borne by the seller as the property in the remaining stock was not passed because the required weighing was not completed.

Question: 72 2011- Dec
Mrs. Kamini purchased a tin of standard quality kerosene oil from a dealer of repute. When part of the kerosene was put to use in a stove for cooking, an explosion occurred causing damage. Mrs. Kamini claims damages from the dealer who refuses to pay damages. Offer your views based on provisions of sale of Goods Act.
(4 marks)

Answer:
Section 16 of the sale of goods act states that goods sold should be capable of being used for the purpose for which it has been sold. Kerosene oil should be capable of being used as fuel which was not so in the present case. Kamini shall be entitled to receive back the price as well as compensation for the loss

Question: 73 2011- Dec
(i) **Mr. Ambika an agent of a buyer obtained goods from Railways and loaded such goods on his truck on 02.11.11. In the meantime, the Railways received a Notice from the seller (i.e. consignor) for stopping goods in transit as the Buyer became insolvent. Referring to the provisions of the Sale of Goods Act, 1930 decide whether the Railways can stop goods in transit as instructed by the seller ? (2 marks)**

(ii) Mr. Paul sold to Mr. Ray certain quantity of foreign refined palm oil warranted equal to sample. The samples consisted of palm oil mixed with vegetable oil. The oil tendered corresponds with the sample but it was not such as is known in market as foreign refined palm oil. Mr. Ray wants to reject the oil on the ground that the oil supplied was not in accordance with the foreign refined palm oil. Advise Mr. Ray. (2 marks)

Answer :
(i) As the goods are not in possession and control of the railways, they can not stop goods in transit because they (railways) have already given goods to Ambika. It is Ambika who can stop the goods in transit because the goods are loaded in truck as per instruction of Ambika.

(ii) Mr. Ray can reject the goods. In case of sale by sample as well as by description, goods must not only correspond to sample but also to description i.e. foreign refined palm oil. **(Section 15 of the Sale of Goods Act, 1930)**
No amount of exemption clauses can compel a person to buy a thing different from contracted to buy.

Question:74 2012- June [2]
(i) As per order, Mr. Malhotra sent some goods to Mr. Paul at Kolkata through Rail. The Station Superintendent of Howrah Statibn informed Mr. Paul that goods are held at the Station at Paul's risk and cost. In the mean time, Mr. Paul became insolvent. Mr. Malhotra wants to enforce right as an unpaid sellei. Advise. (2 marks)

(ii) Ashim Selis 1600 kgs. of wheat out of large quantity lying in his godown forwarded to Bablu. Out of these, Bablu sells 600 kgs. to Chandan (wheat yet to be ascertained). Then Chandan the delivery order signed by Bablu

to Ashim who confirmed that wheat would be despatched in due course. Bablu then becomes insolvent. Ashim refused to deliver to Chandan. Advice Chandan based on rules. (3 marks)

(iii) Mr. Batliboi bought 50 kgs. of potato against cash payment from Mr. Joshi under a Contract of Sale but half of consignment was rotten and Mr. Joshi refused to change the rotten potato nor refunded the value. Advise Mr. Batliboi. (3 marks)

Answer :
(i) The goods has reached its destination and the seller Malhotra has no right of stoppage in transit as the transit is over at Kolkata. Paul has become insolvent hence he cannot make any payments. Malhotra cannot act as an unpaid seller because the buyer is not capable of making any payment.

(ii) Ashim can not refuse to deliver 600 kgs. of wheat to Chandan. Sec. 53 of The Sale of Goods Act, 1930 provides that seller (i.e. Ashim) loses his right of lien, if he has assented to the sale to a subsequent buyer. By giving assent to Chandan, Ashim has lost his right of lien.

(iii) The seller should deliver the potatoes in good condition which he has not done. The buyer has right to ask for good quality and correct quantity of potatoes. As per Sale of Goods Act 1930, the seller should pay for the rotten potatoes.
The quantity indicates that food stuff was not for personal consumption and for commercial purposes. Hence Mr. Joshi cannot take the plea of "implied condition of fitness". The doctrine of 'Caveat Emptor' would apply and Mr. Joshi does not have a case.

Question: 75 2012- Dec
'A', the buyer ordered a patent smoke consuming furnace by its Patent name for his brewery on 'B'. Furnace received was however fopnd to be unsuitable for the purpose. Hence seller is responsible. (2 marks)

Answer
The seller is not responsible because he has supplied the goods as per the orders and specifications of buyer. If the buyer could not use the goods for his purpose, it is not the failure of seller. Buyer should have been careful while giving the order for the goods, whether such goods would serve his purpose or not.

Question: 76 2012- Dec
Mr. Barun tells Mr. Tarun in presence of Mr. Arun that he is the Agent of Arun who maintains silence instead of denying Barun's statement. Later on Barun sells Arun's Goods to Mr. Tarun. Arun now disputed Barun's title to the goods, as Barun was not Agent of Arun. Explain whether Arun is right. (2 marks)

Answer:
In this case Arun cannot dispute Tarun's ownership title to the goods. Sec. 27 of Sale of Goods Act provides that where the owner by his conduct or omission, leads the buyer to believe that the seller has right and/or authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets better title than the seller. This is case of sale by estoppels.

Question: 77 2013- June
Mr. 'A' purchased a Refrigerator from Mr. 'B' on "hire purchase agreement" expiring on 31.12.15. Mr. 'A' sold on 01.05.13 that Refrigerator to 'C' who purchased against adequate consideration. 'A' has right to give good title to Mr. C. (2 marks)

Answer:
Under Hire Purchase Agreement, the ownership passes to buyer only on payment of last installment. The hirer under hire purchase system, has no title to the refrigerator therefore Mr. A cannot give a good title to Mr. C. This is because Mr. C. does not get a better title than Mr. A had.

Question: 78 2013- June
(i) M/s. wholesaler agreed to supply 1000 Pcs. of Cotton Shirt to M/s. Retailer at INR 300 per shirt by 31.05.2013. On 01.02.2013 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to INR 350 each. Examine the right of M/s. Retailer. (2 marks)

(ii) Mr. Malhotra sold 1000 kgs. of rice to Mr. Basu who delayed in taking the rice from Mr. Malhotra. In the meantime Mr. Malhotra sold those rice to Mr. Roy who took the delivery for value & without notice of prior sale. Hence Mr, Roy has no good title of ownership to goods Comment. (2 marks)

Answer

(i) On 01.02.2013 M/s Wholeseller indicated his unwilfingness to supply cotton shirt @ 300/- per shirt although there is time up to 31.05.2013 for performance of the contract.

It is therefore called anticipating breach of contract. In such case M/s. Retailer can claim damages. M/s Wholeseller may treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and claim damages for breach.

(ii) Where Mr. Malhotra having sold goods continues in possession thereof or documents of title to the goods, the delivery by such seller i.e., Mr. Malhotra will pass a good title to Mr. Roy, since Mr. Roy acted on good faith and without notice of the previous sale by paying the value (Sec. 30)

• Where however Mr. Malhotra keeps the goods as Mr. Basu's bailee, this section shall not apply **(Sec. 30)**

• In these circumstances Mr. Roy can sue Mr. Malhotra

Question: 79 2013- Dec

Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed? **(3 marks)**

Answer:

Agent's Authority in an emergency: As per **Section 189 of the Indian Contract Act, 1872.**

• An agent has the authority in an emergency to do all such acts as man of ordinary prudence (means carefulness, wisdom)would do for protecting his principal from losses which the principal would have done under similar circumstances.

• A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses.

• Here the agent acts in an emergency and act as a man of ordinary prudence.

• In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.

Space 10 write important points for revision,

Question: 80 2014- June

Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price?

(4 marks)

Answer:

As per the Rule of Implied Condition, [Sec. 16 (1)]: There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware). But there is exception to this rule of Condition as to Quality or Fitness: There is an implied Condition that the good shall be reasonably fit for a particular purpose described if the three conditions are satisfied:

(i) The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.

(ii) The buyer must have relied upon the seller's skill or judgment.

(iii) The seller's business must be to sell such goods.

Note: *This condition cannot be invoked against a casual seller. In the given case, Mr. Z' bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e. whether it is fit to make ice. After using the same Mr. Z' came to know that the refrigerator was unfit for the purpose. The dealer is liable to refund the price because refrigerator* was *unfit for the purpose for which it was meant for and the buyer was not required to disclose this particular purpose.* ***(Evens v. Stelle Benjamin).***

Question: 81 2014- Dec
Makhan, seeing a mobile phone in a showcase of a shop which was marked for sale for ` 2,000, enters the shop, pJaces ` 2,000 on cash counter and told to give him displayed mobile. Shop owner refused. Can the shop owner refuse to sale the displayed mobile? (3 marks)

Answer:

• Price quotations and price tags do not amount to an offer but are only an invitation to an offer.

• Therefore, Makhan's picking up the mobile with price tag of ` 2,000/- amounts to an offer by Makhan to purchase the same at that price.

• It remainsto be accepted by the seller- the salesman at the cash counter of the mobile store, to result in a concluded contract. The salesman has every right to accept or refuse the offer.
Thus, Makhan shall have no remedies.

Question: 82 2014- Dec
Lalit delivered sarees valuing ` 50,000 to Rohit on 'Sale or Return Basis'. Rohit further delivered these sarees to Sumit and Sumit to Mohit on the same terms and conditions. Subsequently, these sarees were burnt by fire while in the custody of Mohit. Lalit filed a suit against Mohit for the recovery of the price, with reference to provisions of the Sale of Goods Apt, 1930, examine whether Lalit's suit for the price shall be maintainable. (4 marks)

Answer:
In case of sale of goods on 'sale or return' basis the property in goods passes from the seller to the buyer in any of the following circumstances as per provisions given under Section 24 of the Sale of Goods Act, 1930:

(a) When he (buyer) signifies his approval or acceptances to the seller;

(b) Where he does any act adopting the transaction, i.e., sells or pledges the goods to a third party and,

(c) Where he retains fhe goods, without giving notice of rejection, beyond the time fixed for the return of goods or beyond a reasonable time (where no time is fixed).

Thus, in the given-problem, Rohit is deemed to have accepted the sarees by further transaction to Sumit and Sumit is deemed to have accepted the sarees by further transaction to Mohit. The ownership is thus vests on Sumit till Mohit approves or does any act adopting the transaction. In the meantime the sarees are burnt from the custody of Mohit, and it is assumed that Mohit has handled the sarees with due care.
Hence the loss should fall on Sumit, because at present he is the owner and risk being associated with ownership unless otherwise agreed between the parties.

Question: 83 2014- **Dec**
RK sells 200 bales of clothes to SK and sends 100 bales by lorry and 100 bales by Railway. SK receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. RK being still unpaid, stops the goods in transit. The official receiver, on SK's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (4 marks)

Answer:
Section 50, of Sale of Goods Act, states that, 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 course of transit and retain them until payment of tender of the price. **Hence the major rules applicable would be:**

(a) The seller must be unpaid

(b) He must have parted with the possession of goods

(c) The goods must be in transit

(d) The buyer must have become insolvent

Applying the above provisions in the given case, we may conclude that RK being unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit and SK has become insolvent.

Question: 84 2015- June
With a view to boost the sales, M/s ABC Ltd. sells a new machine to Mr. B on trial basis for a period of three days with a condition that if Mr. B is not satisfied with the performance of the new machine, he can return back the new machine. However, the machine was destroyed in a fire accident at the place of Mr. B before the expiry of three days. Decide whether Mr. B is liable for the loss suffered under Sale of Goods Act, 1930. (3 marks)

Answer:
• The problem as asked in the question is based on the provisions of the Sale of Goods Act, **1930** as contained in **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.

• In the given case that the subject matter of the contract i.e., new machine was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer.

• Therefore, in the present case Mr. B is not liable for the loss suffered due to the fire accident over which B has no control.

• Thus M/s. ABC Ltd. will have to bear whatever loss that has taken place due to the fire accident.

Question: 85 2015 - Dec
(i) For the purpose of making uniform for the employees, Amit bought dark blue coloured cloth from Bhagat, but did not disclose to the seller the purpose of 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, boots and carriage lining. Advise Amit whether he is entitled to have any remedy under the Sale of Goods Act, 1930? (3 marks)
(ii) Mahendra made a hire-purchase agreement with Narendra for a car of which Narendra was described as the owner. Mahendra paid four of the twelve monthly instalments and then learnt that Jitendra claimed to be the owner of the car. He nevertheless paid the balance of instalment and exercised his option to purchase. Jitendra then demanded the car and Mahendra gave it up to him. Mahendra then sued Narendra to recover the full price and Narendra counter claimed for a reasonable sum as hiring charges for the car during the period it was with Mahendra. Decide. (3 marks)

Answer:
(i) • As per the provision of **Section 16(1) of the Sale of Goods Act, 1930,** an implied condition in a contract of sale is that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business.

• In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so.

• Therefore, the implied condition as to the fitness for the purpose does not apply.
Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act ***[Jones v. Padgett. 14 Q.B.D. 650].***

(ii) • The ***"Nemo dat quod non habef*** rule protects the true owner (Jitendra) and the buyer (Mahendra) who was aware of Narendra's defective rights after paying the fourth installments, would not get any right or title out of his ineffective hire purchase agreement with Narendra.

• Because Narendra was neither owner nor an authorized person to put the car on hire purchase and for the same reason, he is not entitled to receive any money under the agreement.

• However, Mahendra may be asked by Jitendra to pay a reasonable rent for the use of the car and Mahendra can recover the amount paid by him to Narendra.

Question: 86 2016 - June [2]

Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (5 marks)

Answer:
Section 50 of the Sale of Goods Act, states that, 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 course of transit and retain them until payment of tender of the price.

Hence the major rules applicable would be:
(a) The seller must be unpaid

(b) He must have parted with the possession of goods

(c) The goods must be in transit

(d) The buyer must have become insolvent

Applying the above provisions in the given case, we may conclude that Ram being unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

Question: 87 2016 - Dec
(i) A delivered some diamonds to B on sale or return basis. B delivered
the diamonds to C and C to D on similar terms. The diamonds were stolen while in the custody of D. Who shall suffer the loss? (5 marks)

(ii) X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930.
(3 marks)

Answer:
(i) In this case, B has adopted the transaction by delivering the diamonds to C and thus is liable to pay the price to A. Similarly C has adopted the transaction by further delivery to D and thus is liable
to pay the price to B. As between C and D, the transaction was still of sale or .return which was not adopted by D, either expressly or impliedly, and thus the ownership had not passed to D at the time of loss. Therefore, C shall suffer the loss of diamonds.

(ii) **X has no remedy against the seller as the doctrine of Caveat Emptor will apply:**
"Caveat emptor" means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of **Section 16 of the Sale of Goods Act, 1930** which runs thus, "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Question: 88 2018 - June
M/s. Tea Enterprises agreed to supply 2,200 Kgs. of Tea to M/s. Gopal Enterprises at `1200/- per Kg. by 30th April, 2018 . On 1st March, 2018 M/s. Tea Enterprises informs Gopal Enterprises that they are not willing to supply the Tea as the price of Tea increased to `1400/- per Kg. Examine the right of M/s. Gopal Enterprises.
(8 marks)

Answer:
In terms of the provisions of Sections 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.
Rights of the Buyer according to the Sale of Goods Act, 1930 include:
(1) To have delivery of the goods as per contract. (Sections 31 and 32);

(2) 'To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;

(3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec. 57);

(4) To sue the seller for specific performance;

(5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec. 59);

(6) To sue the seller the damages for anticipatory breach of contract (Sec. 60)
In the instant case M/s. Gopal Enterprises can exercise any of his rights
discussed above.

Question: 89 2019 - June [3]
Himadri sells 400 Kgs. of tea to Rahul and sends 200 Kgs. by lorry and 200 Kgs. by Railway. Rahul receives delivery of 200 Kgs. sent by lorry, but before he receives the delivery of the tea sent by railway, he becomes bankrupt. Himadri being still unpaid, stops the goods in transit. The official receiver, on Rahul's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (7 marks)

NEGOTIABLE INSTRUMENTS ACT, 1881

15.7.18

NEGOTIABLE INSTRUMENT ACT, 1881

INTRODUCTION

Transaction can be on cash or credit. If the payment have been made, there is no requirement of this chapter. If payments are pending, this can be with documentation or without documentation. If credit transaction took place without documentation, this chapter shall not apply. If credit transaction took place with documentation, there are two cases. →

(a) Debtor is writing himself a document that he will pay.

(b) creditor is writing that debtor will pay and debtor is signing the same.

Such documents must be signed by Notary public officer as well. this becomes an evidence that there is a debt. Such documents are also kept in custody of creditors so that creditor can demand money from debtor on the basis of such document. Such document is called Negotiable Instrument because such documents can be exchanged for money. It means any piece of paper which is return for money and convertible into money shall be negotiable instrument. It is good substitute for currency.

It means negotiable instrument as per law are only promissory note, Bill of exchange and cheque

but there can be various negotiable Instrument as per usage. If debtor is himself writing, it is called ~~promission~~ promissary note and if creditor is writing and debtor is signing. Cheque is also called Bill of exchange because just like BOE, cheque is also return by creditor and it is paid by debtor i.e Bank. When the Cheques are printed by bank itself, it is considered as Signature of Bank. So both the documents follow same rules.

DRAWER AND DRAWEE

Drawer: It means a person who writes negotiable Instrument. It is because drawer is also called a person who is creating a ~~Peice~~ Piece of writing. In case of promisary note ~~drawer~~ is debtor himself and in case of Bill of exchange, Drawer is creditor. So ~~debtor~~ doesnot remain same in drawer

Promisary note and BOE.

Drawee: Drawee is a person who is liable to make the payment in case of promisnary note, Bill of exchan-ge and cheque, which means in all cases, debtor is drawee. It means drawee doesnot change in any situation. This is shown below

E → Hak E → Holder.

	Promissory note	Bill of Exchange	Cheque.
Drawer	Debtor	Creditor	Creditor (A/c Holder)
Drawee	Debtor	Debtor	Debtor. (Bank)

HOLDER VS HOLDER IN DUE COURSE

1. Holder means a person who has right to receive payment

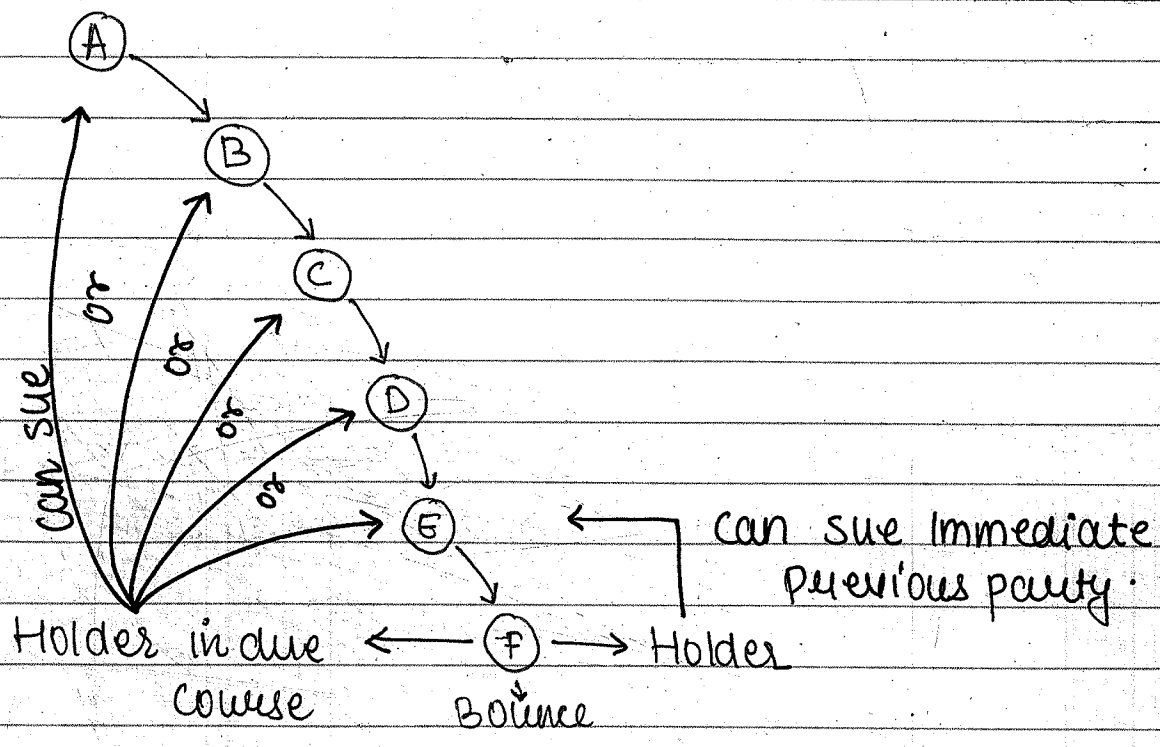
2. Holder in due course means that holder who has fulfilled following two condition:

   (a) Holder received cheque for consideration

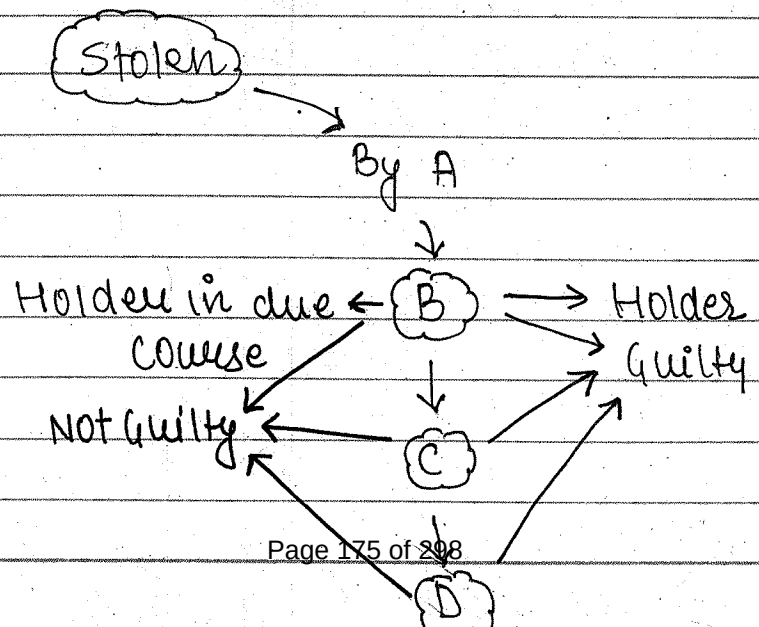
   (b) Holder should have no knowledge of any ~~fraud~~ ~~fraud~~ done ~~and~~ which means he is innocent It is called **Good faith.**

3. So it means a holder in due course is in a better position then a holder.

4. Holder in due course has following two previliges:
   (a) He can file case against all prior parties in case of dishonour but holder can sue only the immediate previous party.



(b) If the defective, improper or stolen cheque reaches to Holder in due course, he will not be considered as guilty and people to whom he forward, this instrument, they will also not further be guilty. However if the same cheque reaches to holder, He and all further parties will be guilty.



Payment of Cheque

1. Generally payment is made to the person whoes name is written on the cheque.

2. However the cheque also carries **pre-printed** word ~~Bearer~~. 'OR BEARER' which means payment can be made to some other person as well who-so ever is bringing the cheque to banks window.

3. This rule applies only on cash payment at the window and not on account to account transf-er.

Crossing of Cheque → Account to Account transfer

1. When two ~~transfers~~ transverse parellel line are drawn together on the Face of the cheque, It is called crossing.

2. The meaning of this crossing is a ~~Sting~~ Signal or Instruction to the Bank that payment should not be made at the window of Bank.

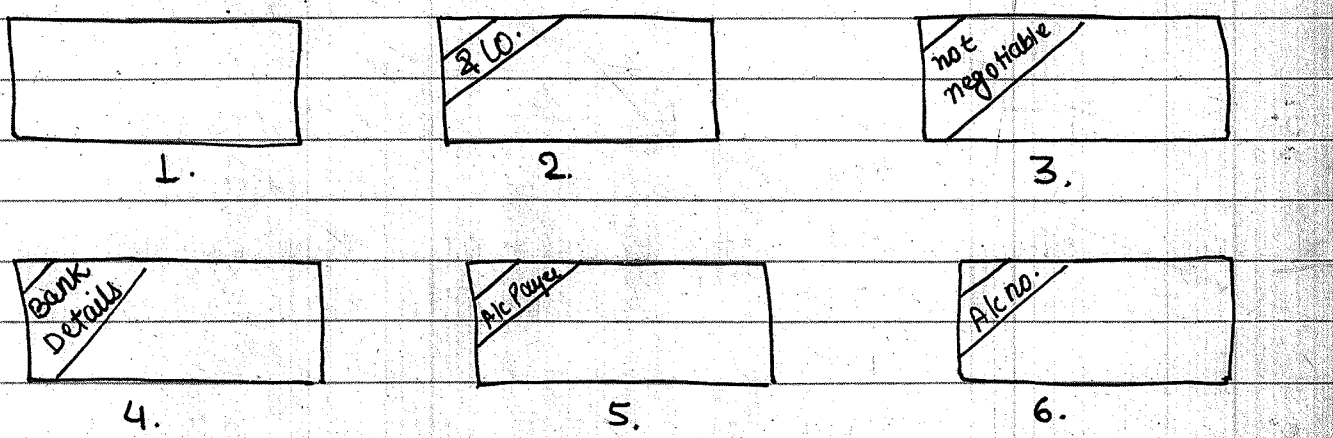
3. When bank ~~teeth~~ receives a signal that window payment is prohibited by a Account holder, bank will do account to account transfer.

4. It will be easy for the bank to trace out such wrong person who has taken payment.

5. ~~If~~ ~~the~~ Crossing can be done with or without some specific words.

6. If there are no words, It is called Blank crossing. It means there is no additional Instruction and payment will simply go to Bank account.

7. In total there can be six types of crossing which are as follows:



(i) In the <u>Blank crossing</u>, It simply means that payment will go to the bank account and not at the window.

(ii) This is called commercial crossing. when this crossing is done, it is assumed ~~that~~ that this cheque belongs to some liability. It will help at the time of filing court case.

3. It is called Not negotiable crossing Generally holder in due course is never considered liable even if he holds a stolen Cheque. It means it is the power of Holder in due course that he is always considered Innoc -ent. However if not negotiable ~~for~~ crossing is done, Holder in due course will also be liable if the cheque was a stolen cheque.

4. It is called Bank particulars ~~for~~ crossing After this crossing, Payment will be processed only by that bank and branch which is specified inside crossing. It will be easy to track the flow of cheque If Payment is done only by specified branch.

5. This is called Account payee crossing. After this crossing, Cheque becomes not transferable. Payment will be given only to that person whoes name is written or mentioned on the ~~to~~ cheque.

6. This is the most safe crossing. Payment is given to that person whoes account number is specified in -side crossing. Even if the ~~receiver~~ has more than One bank account, payment will be credited only in the specified bank account.

Transfer of Cheque

1. If the cheque is uncrossed, it can be transferred by mere delivery (केवल)

2. NO further formalities are required for this transfer.

3. If the Cheque is a Crossed cheque it can be transf-ered only after proper signature.

4. When the cheque is crossed cheque, transferer puts his signature at the back of the cheque. So that banks understands that the cheque has been transfered to someone else.

5. This is little unsafe because bank cannot verify signature of transferer.

6. In the domestic economy people are not using endorsement but it can still be found in following two cases:

   (1) When one banks makes to another bank

   (2) When one ~~country~~ Country is making payment to another ~~country~~ Country.

7. So it is clear that transfer of crossed cheque is per law but it is not an usage.

8. Flow of endorsement is ~~ats~~ as follow:

Paper Dealer —(1) Cheque→ Ms. Factory —(2) Cheque→ Mrs. Govt.

Who will sign?

Paper dealer (FRONT)

Who will sign?

Factory BACK-Factory

↓

Endorsement.

9. Endorsement is of six types:

Sawar 1

Pay to 'x' Sawar 2

Pay to X only Sawar 3

Pay to x SANS RECOURSE Sawar 4

Pay to x SANS FRAIS Sawar 5

Pay to x (+) facility Sawar 6

Explanation

Blank

1. This is called ~~Blank~~ endorsement. It doesnot contain name of the person to whom we are transferring the payment. It means any one can demand payment because no name is written.

2. It is called full endorsement. It is called full because it contains complete details about the person to whom we are transferring the payment. If such person wishes to transfer the cheque further, He can also sign at the back.

3. This is called restrictive endorsement after this endorsement, transferee cannot transfer the cheque further to someone else. and he himself will claim the money.

4. This is called Sans Recourse endorsement.

Sans means = Free

Recourse = Liability.

Transferee of this cheque becomes free from all liabilities in case of ~~dishonour~~ dishonour. It also means that holder will not be able to file case against the transferor. But if Holder is Holder in due course, He can sue all persons other than transferor as well.

5. This is called Sans Frais endorsement.

[SANS = Free.
FRAIS = Expenses.]

It means the transferor will be free from liability of dishonour expense but he will be definately liable for the amount of cheque. It also means transferor cannot get rid off liabilities. ~~It is call.~~

6. This is called Facultative endorsement. Transferor provide some facility to the transferee. in case of any dishonour. This facility should be specified at the ~~to~~ endorsement itself.

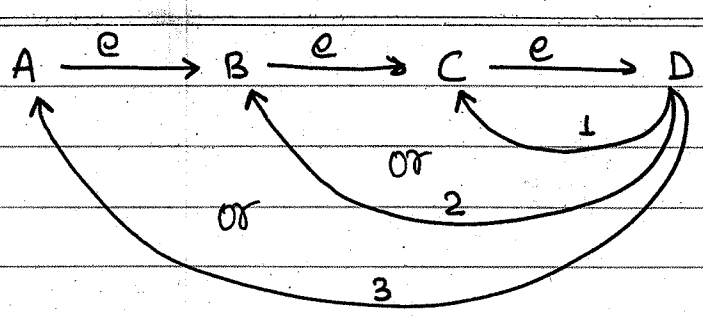
Negotiation Back.

1. Sometimes ~~@~~ the cheque comes back to the transferor, this is called negotiation Back.

2. It means when the transferor become transferee it is called negotiation back.

3. The same cheque can come back from the Immediate next party or after so many endorsement.

4. In the case of negotiation back, all the parties coming in b/w will become free from liabilities.



1] Fuee = C | D
Liable = A | B

2] Fuee = D | C | B
Liable = A

3] Fuee = A | B | C | D
Liable = No one

ALLONGE

[1] Sometimes ~~there~~ there is no space available for further endorsement.

[2] So additional paper slip is attached to the cheque.

[3] First ~~First~~ endorsement on the slip in a manner that half of endorsement should fall on cheque and slip both.

[4] Such slip is called Allonge.

DISHONOUR

(1) Dishonour means two things, non-acceptance and non-payment.

2) Non-acceptance can take place only in case of Bill of exchange and it is not an offence.

3) Non-payment take place in all negotiable Instrument.

4) Non-Payment of negotiable Instrument is punishable offence.

5) There may be a maximum Imprisonment of 2 years and maximum fine of ₹ 500,000.

6) Following compulsory conditions must be fullfiled for punishment.

(a) Negotiable Instrument must have consideration.

(b) It must be a subsequent dishonour.
(* Lagatar twice bounce)

7) It doesnot matter what is the reason of dishonour, every dishonour is treated equally.

8) When promissory note & Bill of exchange get dishonoured, dishonoured certificate must be Obtained by creditor from notary Public officer.

9) Such certificate will work as evidence in the Court of Justice.

10) This certificate is called protest and this process is called Noting.

[Ship से Goods Charne के लिए S3 का Wala Receipt]

MISC. POINT

1. Deposite receipts, Mate' receipts, Bill of lading are not negotiable Instrument.

2. Negotiable Instrument can never be conditional but if it is universal truth it is allowed.

3. Instrument can be of various type:

(a) Inland Instrument: which is made India & payable in India.

(b) Foreign Instrument: which is made outside India but payable in India.

(c) Ambiguous Instrument: When it is not clear from the language of the Instrument whether its is promissionory note or BOE, it is called Ambiguous Instrument.

(d) Instrument payable on demand: Instrument which doesnot have any fixed time for mayment.

(e) Inchoate Stamped Instrument: Instrument which is Incomplete but already signed is called Inchoate Instrument.

4.) Maturity is always calculated with 3 days of grace, except for cheque and demand Bill.

5. If the cheque is signed with sufficient balance in the account, but the gets Insolvent, our liabilities is over.

6. Material alteration means alteration after which the Instrument becomes Invalid. Alteration which are material are on page no. 99. Alteration which are not material are on Pg. no. 100.

7. There are two types of acceptance:

(a) General acceptance: In which the Drawee simply accept the Bill.

(b) Qualified acceptance: which means condition acceptance, which is not allowed in law.

8. Accomodation will means Instrument written to help Someone but law doesnot make any difference in the commercial Instrument and accomodation Instrument. They are treated assuming that they have liability.

9. When more than one ~~country~~ countries are involved, law will apply of that ~~country~~ country in which Instrument was made.

	compensation to the complainant at the time of framing of charges. The interim compensation shall not exceed 20% of the amount of the cheque. A second provision, Section 148, allows the Appellate Court to first order the party convicted in a cheque bounce case to deposit 20% of the of the fine or compensation awarded by the trial court. The above amendments will strengthen the credibility of cheques.

PRACTICE MANUAL

Fill in the blanks

1. The transaction of negotiable instrument requires at least _____ persons.

2. The person named in the instrument, to who or to whose order the money is by the instrument directed to be paid is, called the _____.

3. Negotiation is of two types, namely, _____,_____.

4. A cheque is a bill of exchange drawn on a specified_____on demand.

5. Clearing house is managed by_____.

6. Draft cannot be drawn on_____.

7. Indorsement is of two types, namely, _____,_____.

8. A negotiable instrument indorsed in blank is payable to the _____.

9. If the amount is paid after due date, the interest is payable at _____when no interest rate has been specified in the instrument.

10. The dishonor of the instrument may be due to _____and_____.

Choose the correct answer

1. One of the following is not a negotiable instrument. Identify the same.
(a) Share certificate;
(b) Bill of exchange;
(c) Cheque;
(d) Promissory note.

2**. Which one of the following is a Bill of Exchange?**
(a) A banker's draft;
(b) A demand draft;
(c) An order issued by a District Board Engineer on Government Treasury for payment to or order of a certain person;
(d) All the above.

3. Which one of the following is not the element of draft?
(a) It cannot be drawn on private individual;
(b) It cannot be countermanded easily;
(c) It is open to the person to stop payment;
(d) The bank undertakes the liability which it is bound to discharge in whose favor the draft is issued;

4. Holder in due course means any person-
(a) Drawing the instrument;
(b) Who for consideration became the possession of a promissory note;

(c) Named in the instrument to whom or to whom order the money is directed to be paid;
(d) None of the above

5. Who may negotiate?
(a) Drawer;
(b) Payee;
(c) All of the joint makers;
(d) None of the above
(e) Any of (a) to (c).

6. The liability on the instrument may be discharged-
(a) By cancellation;
(b) By release;
(c) By payment;
(d) By any one of the above methods.

7. A cheque shall be deemed to be crossed specially-
(a) On addition of the name of the banker;
(b) Drawing two lines parallel;
(c) Any of (a) or (b);
(d) None of (a) and (b).

State whether true or false
1. Currency note is a negotiable instrument.
2. Cheque is a bill of exchange.
3. The maker of the promissory note can also be called a drawer.
4. Handing over a negotiable instrument to an agent for safe custody is negotiation.
5. If the maturity date is a public holiday the instrument shall be deemed to be due on the next preceding business day.
6. Bill of exchange is an instrument in writing an unconditional order directing to pay a certain sum of money to the bearer of the instrument.
7. If the indorser signs his name only, the indorsement is called to be 'in full'.
8. Only drawee can be acceptor except in need for hour.
9. A holder is not having right to duplicate of lost bill, before it is overdue.
10. When an instrument is dishonored the holder must give notice that the instrument has been dishonored.

Model Questions
1. What are the elements to be present to hold an instrument on a promissory note?
2. Write not on 'bill of exchange'.
3. What are the differences between a cheque and a draft?
4. Discuss about the various types of instruments.
5. Who are the parties to an instrument?
6. How the maturity date of an instrument is calculated?
7. Discuss about the liability of drawer, agent, representative and drawee.
8. Where are the procedures involved in the presentment of negotiable instrument?
9. Under which circumstances the presentment of negotiable instrument is not necessary.
10. When an acceptance is said to be qualified?
11. Under which circumstances the notice for dishonor is not required?
12. Write notes on 'noting' and 'protest'.
13. Discuss about the contents to be incorporated in a protest.
14. Briefly discuss the various types of estoppels.
15. Discuss the provisions relating the negotiable instrument in International Law.

Answers:

Fill in the blanks

1. 2;
2. Payee;

3. Negotiation by delivery, negotiation by indorsement;
4. Banker;
5. Reserve Bank of India;
6. Private individual;
7. Indorsement in blank, indorsement in full;
8. Bearer; 9. 18%
10. Non acceptance, non-payment

Choose the correct answer

1. A;
2. D;
3. C;
4. B;
5. E;
6. D;
7. A.

State whether true or false

1. FALSE;
2. TRUE;
3. TRUE;
4. FALSE;
5. TRUE;
6. TRUE;
7. FALSE;
8. TRUE;
9. FALSE;
10. TRUE.

Scanner Question:

2011 - June Question 1: Write short note on:

Inchoate instrument (Nl Act) (4 marks)

Answer:

Inchoate Instrument (Nl Act):

• An inchoate (means incomplete, unclear, tentative) instrument is one which is an incomplete instrument, for example, one not mentioning the amount payable, or leaving blank the name of the payee, or one without date.

• When a person gives to another person a blank signed instrument and stamped paper, the latter may convert it into a negotiable instrument by filling the blanks. When the instrument is so filled up, the signer becomes liable in the capacity in which he signs.

• The liability of the signer is restricted to the amount specified therein but not exceeding the amount covered by the stamp.

• But 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. **(Section 120).**

2008 - Dec Question 2: Maker of a cheque is not liable under N. l. Act for dishonour of cheque under certain conditions. State such conditions. (3 marks)

Answer:

Make of the cheque is not liable under the following conditions under the Nl Act.

• If the cheque is not presented to the bank within the validity of the cheque.

• Where the cheque is issued not for the purpose of discharge of any debt or any other liability. A cheque given as gift or for any other purpose or reason but not for satisfaction of any debt and/or liability.

2010 - June Question 3: What is negotiation? (2 marks)

Answer:

Negotiable means transferable on delivery. When an instrument i.e. promissory note, bill of exchange or cheque is transferred to any person to make him holder, the instrument is said to be negotiated.

2011- Dec Question 4: Bill of Exchange dated 1st February, 2011 payable two months after date-was presented to the maker for payment 10 days after maturity. What is the date of maturity? (2 marks)

Answer:

Section 23 of the N.l. Act provides that the maturity of a bill of exchange or a promissory note is the date at which it falls due. **Section 22** states that normally 3 days of grace period is allowed also.

In this case, the date of maturity of the bill is 4th April 2011 provided it is not Sunday or Public Holidays (1st April + 3 days).

2012- June Question 5: There are in total two parties to a Promissory Note. (2 marks)

Answer:

The statement is False. There are Five Parties to a promissory note viz.

(1) **The maker**: The person who makes the "Note" promising to pay the amount Stated therein.

(2) **The Payee:** The person to whom the amount of the "Note' is payable.

(3) **The Holder:** i.e. either the original payee or any other persons in whose favour the "Note" has been endorsed.

(4) **The endorser:** The person who endorses the "Note" in favour of another person.

(5) **The endorsee:** The person in whose favour the "Note" is negotiated by endorsement.

2012 - Dec Question 6: What is 'Noting' (N. l. Act) (4 marks)

Answer:

"Noting" means recording the fact of dishonour by Notary Public upon the Instrument. **"Noting"** must contain the following:

(i) The fact of dishonor.

(ii) Date of dishonor.

(iii) Reasons if any, assigned for dishonor.

(iv) if the Instrument is not expressly dishonoured, reasons why the holder thinks so.

(v) Notary Charges.

2013- Dec Question 7: What will be the fate of a "Holder" of negotiable instrument if he fails to give notice of dishonour to prior parties? (2 marks)

Answer:

If the Holder does not give notice of dishonour of the bill, instrument or cheque (except when the notice of dishonour is excused,) ail the parties liable thereon are discharged of their liability.)

2014- Dec Question 8: State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Negotiable Instrument Act, 1881. Examine, whether there is an offence under the Negotiable Instrument Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment. (5 marks)

Answer:

On dishonour of a cheque the drawer is punishable with imprisonment for a term not exceeding two years or with a fine not exceeding twice the amount of a cheque or with both of the following conditions are fulfilled:

(a) if the cheque is returned by the bank unpaid due to insufficiency of funds in the account of drawer.

(b) If the cheque was drawn to discharge a legally enforceable debt or other liability in whole or part of it.

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

(d) If the payee or the holder in due course of the cheque has given a written notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

(e) If the drawer has failed to make payment within 15 days of the receipt of the said notice. **(Section 135)**

(f) If the payee or a holder in due course has made a complaint within ©ne month of cause of action arising under Section 138 (Section 142)

Case Laws: The Supreme Court held in ***Modi Cements Ltd. Vs. Kuchil Kumar Nandi*** held that once a cheque is issued by the drawer, a presumption under Section 139 follows (i.e. the cheque has been issued for the discharge of any debt or other liability) and merely because the drawer issued a notice thereafter to the drawee as to the bank for stoppage of payment, it will not preclude an action under Section 138. Hence, the drawer of the cheque will be liable for the offence under Section 138 for dishonour of cheque.

2014- Dec Question 9: A Bill of exchange dated 1st February, 2014 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay. (3 marks)

Answer:

The due date of maturity is 4th April (i.e., 3rd day after two months) Promissory notes, bills of exchange and cheques must be presented for payment at the due date of maturity to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In default of such presentment, the other parties to the instrument (i.e., parties other than the parties primarily liable) are not liable thereon to such holder. If authorized by agreement or usage, a presentation through the post office by means of a registered letter is sufficient **(Section 64).** So, the Endorser is discharged due to delayed presentment for payment, and the primary party (i.e., Maker of the instrument) continues to be liable.

2015 - June Question 10: (a) 'A partial endorsement does not operate as a negotiation of the instrument'. Explain. (3 marks)

(b) Amrut draws a cheque payable to 'self or order'. Before he could

encash the cheque, one of his creditors, Bihari approaches him for payment. Amrut endorses the same cheque in Bihari's favour. The banker refuses payment to Bihari on account of insufficiency of funds in the account. Can Amrut be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account under Section 138?

Answer:

(a) • **Section 56** provides that a negotiable instrument cannot be endorsed for a part of the amount appearing to be due on the instrument.

• In other words, a partial endorsement which transfers the right to receive only a part payment of the amount due on the instrument is invalid.

• Such an endorsement has been declared invalid because it would subject the prior parties to plurality of actions (one action by holder for part value and another action by endorsee for part value) and will thus cause inconvenience to them.

• Moreover, it would also interfere with the free circulation of negotiable instruments.

• It may be noted that an endorsement which purports to transfer the instrument to two or more endorsees separately and not jointly as also treated as partial endorsement and hence would be invalid.

• Thus, where A holds a bill for ` 2,000 and endorses it in favour of B for ` 1,000 and in favour of C for the remaining ` 1,000, the endorsement is partial and invalid.

Section 56, however further provides that where an instrument has been paid in part, a note to that effect may be endorsed on the instrument and it may then be negotiated for the balance. Thus, if in the above illustration the acceptor has already paid ` 1,000 to A, the holder of the bill, A can then make an endorsement saying "pay B or order ` 1,000 being the unpaid residue of the bill". Such an endorsement would be valid.

(b) • Section 138 **of Negotiable Instrument Act,** 1881,oreates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

• **Section 138** of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summai^ mode of enforcing a civil right.

• Normally in criminal law existence of guilty intent is an essential ingredient of a crime.

• However the Legislature can always create an offence of absolute liability or strict liability where ***'mens res'*** is not at all necessary.

• No, Amrut cannot be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person.

• A cheque drawn payable to self and later endorsed in favor of another person dies not seem to fall within the purview of the provisions of **Section 138** which lay down that the cheque should have been drawn for payment to another person.

2015 - Dec Question 11: "A cheque is a specie of a bill of exchange with two additional qualifications." Explain.

Answer: (3 marks)

According to Sec. 6 of Negotiable Instrument Act, "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."

A cheque is a bill of exchange with the following two distinctive features which are additional qualifications viz.:

(i) A cheque is always on a specified banker.

(ii) A cheque is always payable on demand.

Thus, a cheque is a bill of exchange drawn on a bank payable on demand. All cheques are bills of exchange, but all bills of exchange are not cheques. A cheque must have all the essential requisites of a bills of exchange.

2016 - June Question 12: State the circumstances under which a banker is bound to refuse the payment of a cheque. (8 marks)

Answer:

Circumstances when the banker must refuse the payment:

Following are the circumstances in which the banker is bound to refuse the payment of a cheque

1.	**When the customer has countermanded payment**	The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer issues instructions to the' banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a

		stopped cheque is a piece of waste paper in the hands of payee.
2.	**When the customer has died**	Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment.
3.	**When the customer has become nsolvent**	Sometimes, the Danker receive; the notice of customer's insolvency. In such cases also he must refuse the payment of[1] the cheques presented after the notice.
4.	**When the customer has become a person of unsound mind**	Sometimes, the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice.
5.	**When a garnishee order has been received by the banker**	The term Garnishee order may be defined as a Court order attaching the balance in customer's account. When the banker receives such order then he is bound to refuse the payment of the customer's cheque.
6.	**When the cheque is lost**	Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque.
7.	**When the account is closed**	Sometimes, the customer closes his account and gives notice to the bankeP. In such cases that banker must not pay any cheque of the customer after the closure of the account.
8.	**When holder's title is defective**	Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque.
9	**When a customer gives notice of assignment of credit balance**	In his account, the banker must refuse the payment of cheque.

2016 - Dec Question 13: Which are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a 'Bill of Exchange' but write on it 'Accepted but payment will be made when goods delivered to me is sold'. Decide the validity. (7 marks)

Answer:

Essentials of a Valid Acceptance of a Bill of Exchange: ***The essentials of a valid acceptance are as follows:***

1.	**Acceptance must be written**	The drawee may use any appropriate word to convey his assent, it may be sufficient acceptance even if just signatures are put without additional words. An oral acceptance is not valid in law.
2.	**Acceptance must be signed**	A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.
3.	**Acceptance must be on the bill**	The acceptance should be on the face of the bill normally but it is not necessary. An acceptance written on the back of a bill has been held to be sufficient in-law. What is essential is that must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it.

4.	**Acceptance must be completed by delivery**	Acceptance would not be complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.
5.	**Where a bill is drawn in sets, the acceptance should be put on one pari only**	Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.
6.	**Acceptance may be either general or qualified**	An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. **(Explanation to Section 86 of the Negotiable Instruments Act 1881).**
In the above case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated. As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto. (Section 86).		

2018 - June Question 14: Anil draws a bill of exchange payable to himself on Sushil, who accepts the bill without consideration just to accommodate Anil. Anil transfers the bill to Ajay for good consideration.

State the rights of Anil and Ajay. Would your answer be different if Anil transferred the bill to Ajay after maturity? (7 **Marks)**

Answer:

Section 43 of the Negotiable Instrument Act, 1881 states the following:

(i) Liability of parties if there is no consideration **-** A negotiable instrument made, drawn, accepted, endorsed ortransferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

(ii) Rights of holder for consideration **-** but if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(iii) No right of accommodating party to recover from accommodating party **-** No party for whose accommodation a negotiable instrument has been made, drawn, accepted, endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Anil is not entitled to sue Sushil, since there is no consideration between Anil and Sushil and hence there is no obligation to pay.

Again Ajay is entitled to sue Anil and Sushil, since Aj'ay is a holder for consideration. Ajay is entitled to sue the transferor for consideration and every other party prior to him.

According to Section 59, in the case of accommodation bills, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity. Hence, even if Ajay has acquired the bill for consideration after maturity, he is entitled to sue.

2018 - Dec Question 15: Rahul draws a cheque payable to 'sell or order'. Before he could encash the cheque, one of his creditors, Samrat approaches him for payment. Rahul endorses the same cheque in Samrat's favour. The banker refuses payment to Samrat on account of insufficiency of funds in the account. Can Rahul be made liable to penalties for dishonor of cheque due to insufficiency of funds in the account under section 138 of Negotiable Instruments Act, 1881? (7 marks)

Answer:

1. Section 138 of Negotiable Instrument Act, 1881, creates statutory offence in the matter of dishonour of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker.

2. Section 138 of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summary mode of enforcing a civil right. Normally in criminal law existence of guilty intent is an essential ingredient of a crime.

3. Although, the Legislature -can always create an offence of absolute liability or strict where 'mens rea' is not at all necessary.

4. No, Rahul cannot be made liable to penalties for dishonour of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person.

5. A cheque drawn payable to self and later endorsed in favour of another person does not seem to fall within the purview Of the provisions of **Section 138** which lay down that the cheque should have been drawn for payment to another person.

2009 - June Question 16: Mr. Paul gave a cheque dated 7.2.2009 for ` 10,000 to Mr. Roy for payment of Mr. Roy's tuition fees. Cheque was dishonoured for insufficiency of funds. Mr. Paul is liable for prosecution.

Answer: (2 **marks)**

Maker of the cheque is not liable under the following conditions under the Nl Act.

• If the cheque is not presented to the bank within the validity of the cheque.

• Where the cheque is issued not for the purpose of discharge of any debt or any other liability. A cheque given as gift or for any other purpose or reason but not for satisfaction of any debt and/or liability. Hence, Mr. Paul is not liable for prosecution.

2009 - Dec Question 17: (a) Mr. E draws a cheque in favour of Mr. F (a minor). Mr. F endorses it in favour of Mr. G. who in turn endorses it in favour of Mr. H. The cheque is dishonoured by the Bank. Discuss the rights of Mr. G and Mr. H and state against whom their rights can be exercised. **(2 marks)**

(b) A cheque for ` 10,000 was dishonoured. Drawer of the cheque submitted valid reasons and justification. Due to relevant reasons for dishonour, the drawer is not responsible. Answer with legal provisions. (2 marks)

Answer:

(a) The Negotiable Instruments Act 1881, declares that a minor may draw, endorse, deliver and negotiate an instrument so as to bind all parties except himself. Thus in the instant case, Mr. H, can claim the amount from Mr. G who in turn can claim the same from Mr. E (not from Mr. F, the minor).

(b) It has been decided by the Bombay High Court in Kumar Porwal vs Narayan Dhondu that "The law only takes cognizance of the fact that the payments are not forthcoming and it matters little that what reasons are behind such non payment". Whatever justification the drawer has offered for non payment of cheque, the drawer remains responsible. All such justifications are to be totally ignored.

2010 - June Question 18: **Cheque for 2,00,000 issued by Mr. Nair was returned unpaid with remarks "account closed". Hence drawee has no remedy. (2 marks)**

Answer:

The drawee has a remedy under the Negotiable Instruments Act and can serve a notice to the drawer within 15 days of dishonour of cheque and demand the payment.

2010 - Dec Question 19: Mr. Saxena received cheque dated 02.05.2010 for *i* 10,000/- from Mr. Malhotra towards cost of furniture. On 13.11.10 Mr. Malhotra closed the Bank Account. What action Mr. Saxena can take to receive the amount against the cheque which is still with him. (2 marks)

Answer:

Unless specified otherwise, the validity of cheque is three months in the present case, the cheque was issued on 02.05.2010, hence it was valid to be presented to the bank up to 02.08.2010.

The account was closed on 13.11.2010 i.e. beyond the lifetime of the cheque.

It means that the cheque was not presented in the bank during its validity period.

This is not fault of person drawing the cheque hence Mr. Malhotra is not responsible.

Legally Mr. Saxena cannot take any action against Mr. Malhotra because he (saxena) failed to present the cheque to the bank for payment.

However, he can request Malhotra to give fresh cheque in place of dead cheque.

2013- Dec Question 20: 'Anil' draws a bill on 'Susheel' for INR 10,000 payable to his order. 'Susheel' accepts the bill but subsequently dishonours it by nonpayment. 'Anil' sues 'Susheel' on the bill. 'Susheel' proves that it was accepted for value as of INR 8,000 and as accommodation to 'Anil' for INR 2,000. How much can 'Anil' recover from 'Susheel'? Decide in the light of the provisions of the Negotiable Instruments Act, 1881? **(3 marks)**

Answer:

According to the provisions of **Section 44 of Negotiable Instruments Act,1881**, when there is a partial absence or failure of money consideration for which a person signed a bill of exchange, the same rules applicable for total absence or failure of consideration will apply. Thus, the parties standing in immediate relation to each other cannot recover more than the actual consideration; Accordingly Anil can recover only INR 8000.

2014- June Question 21: '**A' issue an open 'bearer' cheque for ` 10,000 in favour of 'B' who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to 'C' and 'D'. When it is finally**

presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. In response to this legal notice from 'D', A pleads that cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss whether A's argument is valid or not. (3 marks)

Answer:

• Effects of striking off the word bearer. It amounts to a material alteration. However, such material alteration is authorized by the Act.

• Therefore, the cheque is not discharged; it remains valid.

• . Effects of crossing the cheque. It amounts to a material alteration.

• However, such material alteration is authorized by the Act.

• Therefore, the cheque is not discharged; it remains valid. A's argument is not valid.

• Since the reason for dishonor of cheque is not 'material alteration 'but 'payment countermanded by drawer'.

• Therefore, A is liable for the payment of the cheque and he shall also be liable for dishonor of cheque in accordance with the provisions of **Sectio-138.**

2014 - June Question 22: On a Bill of Exchange for Rupees one lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from customer for value and in good faith before the bill becomes payable. State with reasons

whether 'A' can be considered as a "Holder in due course" and whether he can receive the amount of the Bill from 'X'? (4 marks)

Answer:

• According to the **Section 9 of the Negotiable Instruments Act, 1881**

"holder in due course" means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

• As 'A' in this case ***prima facie*** became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

• But where a signature on the Negotiable Instruments is forged the instrument is not at all an instrument in itself.

• The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment inspite of forgery, he cannot retain the money.

• The true owner may sue on tort (tort means wrongful act, misdeed, offence)the person who had received.

• The principle is universal in character; by reason where of even a holder in due course is not exempt from it.

• A holder in due course is protected when there is defect in the title.

• Bu; he derives no title when there is entire absence of title as in the case of forgery. Hence, "A" cannot receive the amount on the bill.

2014 - Dec Question 23: Mr. Punit obtains fraudulently from Rohan a crossed cheque "Not Negotiable". He transfers the cheque to Sunit, who gets the cheque encashed from ABC bank limited which is not the drawee bank. Rohan on coming to know about the fraudulent act of Mr. Punit sues ABC Bank for the recovery of the money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Rohan will succeed in his claim. Would your answer be still the same in case Mr. Punit does not transfer the cheque and gets the cheque encashed from ABC Bank himself? (4 marks)

Answer:

• According to **Section 130 of the Negotiable Instruments Act 1881**, a

person taking a cheque crossed generally or specially bearing in either case the words, not negotiable shall not have or shall not be able to give a better title to the cheque than the title the person from whom he had.

• In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

• Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title but if the transferor has a defective title, the transferee is affected by such defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith arid for value.

• As Mr. Punit in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment. ***(Great Western Railway Co. Ltd. Vs. Londan and County Banking Co.)***

• The answer in the second case would not change and shall remain the same for the reasons given above. Thus, Rohan in both the cases shall succeed in his claim from ABC Bank.

2015 - June Question 24: Amit signs, as maker, a blank stamped paper and gives it to Sumit and authorizes him to fill it as a note for ` 500, to secure an advance which Namit is to make to Sumit. Sumit fraudulently fills it up as a note for ` 2,000, payable to Namit who has in good faith advanced ` 2,000. Decide, with reasons, whether Namit is entitled to recover the amount, and if so, upto what extent? (4 marks)

Answer:

• A duly signed blank stamped instrument is called an inchoate instrument. According to **Section 20** of the Negotiable Instruments Act, an Inchoate instrument is an incomplete Instrument in some respect.

• When a person signs and delivers blank or incomplete stamped paper to another, such other is authorized to complete it for any amount not exceeding the amount covered by the stamp.

• The person so signing is liable upon such instrument, to any holder in due course for any amount.

• But any other person can't claim more than the amount intended by the drawer of the instrument.

Thus, for Namit's claim to be valid and enforceable, two things are important:

(a) That Namit is a holder in due course, i.e., there should be valid consideration and he would have obtained it in good faith and before maturity.

(b) The amount filled in i.e., ` 2,000 is covered by stamp amount.

In Negotiable Instruments Act every holder is deemed to be a holder in due course. Thus, the other party has to establish that Namit is not a holder in due course.

2015- Dec Question 25: Parag issues an open 'bearer' cheque for ` 10,000 in favour of Qadir who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to Raman and Suman. When it is finally presented by Suman's banker, it is returned with remarks 'payment countermanded' by drawer. In response to a legal notice from Suman, Parag pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, decide, whether Parag's argument is valid or not? (3 marks)

Answer:

The cheque bears two alterations when it is presented to the paying banker One, the word 'bearer' has been struck off and two, the cheque has be' crossed. Although both the alterations amount to material alteration/ jut such alterations are authorized by the Act. So, it can be said that, ***Y*** ih of these alterations do not amount to material alteration under the ***y*** ^visions of the Act and hence the liability of any including the drawernot at all affected. Parag is liable to pay the amount of the cheque to the holder.

2015- Dec Question 26: A cheque payable to bearer is crossed generally and is marked 'not negotiable'. The cheque is lost and comes into the possession of Baldev, who takes it in good faith and for value. Baldev deposits the cheque into his own account and his banker collects the same. Discuss the liability of collecting banker and paying banker. Can Baldev be compelled to refund the money to the true owner of the cheque? (3 marks)

Answer:

Neither the collecting banker nor the paying banker incurs any liability to anyone because of special protection granted to the bankers under the Act. Yes, the true owner can compel Baldev to refund the money because the cheque bears 'not negotiable' crossing as a result of which the transferee • cannot get a better title than that of the transferor.

2017- June Question 27: A draws a bill on B. B accepts the bill without any consideration. The bill is.transferred to C without consideration. C transferred it to D for value, Decide - (i) Whether D can sue the prior parties of the bill,

(ii) Whether the prior parties other than D have any right of action intense? Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. (6 marks)

Answer:

Section 43 of the Negotiable Instruments Act, 1881 provides that an instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder

for consideration, such holder, and every subsequent holder deriving title from him, may recover.the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid **Section 43,** the bill ultimately has been transferred to D with consideration. Therefore. D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the. problem, the prior parties before D i.e., A, B and C have no right of action interse because first part of **Section 43** has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

2017- Dec Question 28: X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case. MTP JUNE 19 SET 1

Answer: **(7 marks)**

Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

2019 **- June Question 29: Ajay draws a bill on Anoop. Anoop accepts the bill without any consideration. The bill is transferred to Udit without consideration. Udlt transferred it to Vicky for value.** **(8 marks)**

Decide -

(i) Whether Vicky can sue the prior parties of the bill?

(ii) Whether the prior parties other than Vicky have any right of action intense?

MTP Questions Answers

Question30 : June 2017 Set-1

When is presentment of an instrument not necessary under the Negotiable Instruments Act?

According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

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 other 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, if he (i.e. maker etc) cannot after due search be found;

v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;

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

Question 31 June 2017
Write a note on: Crossing

Section 123 provides that where a cheque bears across its face an addition of the words _and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words _not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words _not negotiable' that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially.

- Where a cheque is crossed generally, the holder may cross it specially;
- Where a cheque is crossed generally or specially, the holder may add the word not negotiable';
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Dec 2017
No question

Dec 2017
No question

June 2018
No question

Question 32 June 2018 Set-2
Write a note on: Negotiable Instruments

Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-

- is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
- is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
- either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in 'Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms'

The following are not the negotiable instruments-

- share certificate passing from hand to hand with blank transfers –
- Deposit receipts
- Mate's receipt
- Bill of lading
- A benefit under a letter of credit

Question 33 Dec 2018 Set- 1
When is presentment of an instrument not necessary under the Negotiable Instruments Act?

According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

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 other 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, if he (i.e. maker etc) cannot after due search be found;

v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;

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

Dec 2018 Set- 2
Same as June 2017 Set-2

Question 34 June 2019
X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters Into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z t a k e s the Bill as a holder in due coune. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonored. X sues Y for recovery of money. With reference t o the provisions of Negotiable Instruments Act, decide whether X will succeed in the case.

Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, posswssor or endorsee cannot receive the amount of instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud. However, as per section 53,a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z(who is a holder in due course0,X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence will succeed.

Question 35 June 2019
What are difference between Promissory Note and Cheque?

	Promissory Note	Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 6 of the NI Act, 1881.
2.	here are two parties: •Maker. •Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	here are three parties: •Drawer. •Drawee. •Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	A cheque is payable immediately on demand without any days of grace
4.	Promissory note is not crossed	Cheque can be crossed
5.	No protection is available to the payee of note	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	Stamp is not necessary.
9.	Limitation: 3 years	Limitation: 6 months

RTP Questions

Question 36 RTP June 2018

Atul draws a bill of exchange payable to himself on Sidhartha, who accepts the bill without consideration just to accommodate Atul. Atul transfers the bill to Bikash for good consideration. State the rights of Atul and Bikash. Would your answer be different if Atul transferred the bill to Bikash after maturity.

Section 43 of Negotiable Instruments Act, 1881 states the following:

(i) Liability of parties if there is no consideration – A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

(ii) Rights of holder for consideration – But if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(iii) No right of accommodating party to recover from accommodating party – No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

In the given case, Atul is not entitled to sue Sidhartha, since there is no consideration between Atul and Sidhartha and hence there is no obligation to pay.

Again Bikash is entitled to sue Atul and Sidhartha, since Bikash is a holder for consideration. Bikash is entitled to sue the transferor for consideration and every other party prior to him.

Even if Atul has transferred the bill after maturity, Bikash would have the right to sue, since the right to sue the transferor for consideration and every other party prior to him, is available to holder for consideration, even though he is not the _holder in due course' i.e. even if the holder for consideration obtains the bill after maturity.

Question 37

Rahul accepted a bill of exchange and gave it to Keshav for the purpose of getting it discounted and handing over the proceeds to Rahul. Keshav having failed to discount it returned the bill to Rahul. Rahul tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. Keshav picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody rather

than cancelled. Keshav put it into circulation and it ultimately reached Sidhartha, who took it in good faith and for value. Is Rahul liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

Sidhartha is a holder in due course, since he acquired the bill in good faith and for value; and since he became the possessor of the bill payable to bearer (assumed that the bill was payable to bearer) (Sec. 9)

Rahul cannot deny the validity of the bill, since no drawer or acceptor of a bill shall, in a suit by a holder in due course, be permitted to deny the validity of the bill as originally drawn, and thus, Sidhartha who is the holder in due course, acquires a good title to the bill (Sec. 120).

Sidhartha is entitled to recover the payment of the bill from Rahul and all prior parties, since a holder in due course has the right to sue all the prior parties (Sec. 36)

Question 38 RTP Dec 2018
State the circumstances on the basis of which a banker can dishonor a cheque under the provisions of Negotiable Instruments Act, 1881.

Grounds for dishonour of cheque –
A banker will be justified or bound to dishonour a cheque in the following cases:
1. If a cheque is undated
2. If the cheque is stale
3. If the instrument is inchoate or not free from reasonable doubt.
4. If the cheque is post -dated and presented for payment before its ostensible date.
5. If the customer‘s funds in the banker‘s hands are not _properly applicable‘ to the payment of cheque drawn by the former.
6. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn.
7. If the bankers receive notice of customer‘s insolvency or lunacy.

- If the customer countermands the payment of cheque for the banker‘s duly and authority to pay a cheque ceases.
- If a garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
- If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter‘s death.
- If notice in respect of closure of the account is served by either party on the other
- If it contains material alterations, irregular signature or irregular endorsement

Question 39
‘Raju’ is the holder of a bill of exchange made payable to the order of „Ram‟. The bill of exchange contains the following endorsements in blank:
First endorsement „Ram‟
Second endorsement ‘Ganesh’
Third endorsement ‘Naresh’ and
Fourth endorsement ‘Bakul’

‘Raju’strikes out, without Bakul’s consent, the endorsements by ‘Ganesh’ and ‘Naresh’ Decide with reasons whether ‘Raju’ is entitled to recover anything from ‘Bakul’ under the provisions of Negotiable Instruments Act, 1881

According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser‘s remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, Raju is the holder of a bill of exchange of which Ram is the payee and it contains the following endorsement in blank:
First endorsement, Ram‘
Second endorsement, Ganesh‘

Third endorsement, Naresh‘
Fourth endorsement, Bakul

Raju‘, the holder, may intentionally strike out the endorsement by Ganesh‘ and Naresh‘; in that case the liability of Ganesh‘ and Naresh‘ upon the bill will come to an end. But if the endorsements of Ganesh‘ and Naresh‘ are struck out without the consent of Bakul‘, Raju‘ will not be entitled to recover anything from Bakul‘. The reason being that as between Naresh‘ and Bakul‘, Naresh‘ is the principal debtor and Bakul‘ is surety. If Naresh‘ is released by the holder under Section 39 of the Act, Bakul‘, being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser‘s remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if Raju‘ strikes out, without Bakul‘s consent, the endorsements by Ganesh‘ and Naresh‘, Bakul‘ will also be discharged.

Workbook Questions

Question: 40
What is Negotiable Instrument? Discuss the essential features of a Negotiable Instrument.
Section 13 of the Act defines the terms „negotiable instrument‟ as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-
• is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
• is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
• Either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in „Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms‟ – AIR 1933 Rang.131. The following are not the negotiable instruments-
• Share certificate passing from hand to hand with blank transfers – Hazarimaul V. Statis Chandra‟ – ILR 46 Cal.331;
• Deposit receipts – Anantharam V. O.L., of T.N.Q. Bank‟ – 1939 Mad W.N. 1096;
• Mate‟s receipt – Nacheppa Chetty V. Irravaddy Flotila & Co., - ILR 41 Cal. 670;
• Bill of lading – United Bank of India V. N.S. Bank – AIR 1959 Cal. 328;
• Promissory note - Khirodnath Gountia V. Arjun Panda‟ – (1971) 2 Cut. W.R. 223
• A benefit under a letter of credit – Joseph Pyke & Son V. Kedarnath- AIR 1962 Cal.326.
Essential Features of a Negotiable Instrument:
1. It must be in writing.
2. It should be signed by the maker or drawer.
3. There must be a promise or order to pay.
4. The promise or order must be unconditional.
5. It must call for payment in money and money only.
6. It should call for payment of a certain sum.
7. The property in the instrument may be passed in two ways by:
(a) mere delivery; and
(b) endorsement and delivery.
8. The consideration is also presumed to have been passed

Question 41
Distinguish between-
[A] Promissory Note and bill of exchange
[B] Promissory Note and Cheque
[C] Bill of Exchange and Cheque

[A] Distinction between Promissory Note and Bill of Exchange.

	Promissory Note		Bill of Exchange
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 5 of the NI Act, 1881.
2.	There are **two** parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety"	2.	There are **three** parties: • Drawer. • Drawee. • Payee.
3.	It contains a **Promise** to pay.	3.	It contains an **order** to pay.
4.	**No conditions** shall be made in a promissory note.	4.	A bill may be **accepted conditionally**.
5.	The liability of a maker of the promissory note is primary and absolute.	5.	The liability of the drawee of a bill of exchange is secondary and conditional.

[b] Distinction between Promissory Note and Cheque.

	Promissory Note		Cheque
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	3.	A cheque is payable immediately on demand without any days of grace.
4.	Promissory note is not crossed.	4.	Cheque can be crossed.
5.	No protection is available to the payee of note.	5.	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	6.	A cheque can be self drawn or bearer cheque.
7.	No criminal liability shall be imposed on the maker.	7.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	8.	Stamp is not necessary.
9.	Limitation: 3 years	9.	Limitation: 6 months

Distinction between bill of exchange and Cheque

	Bill of Exchange		Cheque
1.	It is defined in Sec. 5 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are three parties: • Drawer. • Drawee. • Payee.	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Bills of exchange are not crossed.	3.	Cheques may be crossed.
4.	Generally three days of grace are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	4.	Immediate payment is required in case of cheque. No grace days are allowed.
5.	Anybody including banker may be a drawee in case of bill of exchange.	5.	The drawee is always a baker.
6.	It must be accepted before the acceptor can be made liable upon it.	6.	It requires immediate payment. It does not require acceptance of the maker. Thus the question of acceptance does not arise in case of cheque.
7.	Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	7.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
8.	Statutory protection is not available.	8.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
9.	Civil Liability in case of dishonour of bill of exchange.	9.	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.

Question 42

What do you mean by Holder? What is Holder in due course? Discuss the difference between holder and holder-in-due course.

Section 8 defines the term „holder". The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

In „Anjaniaih V. Nagappa" – AIR 1967 AP 61 it was held that the term „holder" as defined in Section 8 of the Act would not include a person, who, though in possession of the instrument, had no right to recover the amount due from the parties thereto, such as the finder of a lost instrument payable to bearer or a thief in possession of such an instrument, or even the payee himself, is he is prohibited by an order of court from receiving the amount due on the instrument. Where a plaintiff sued not as a holder in possession of the promissory note but claimed to recover the debt, on the basis of a succession certificate, he would be the only person entitled to recover the debt.

Holder in due course – Section 9 defines the term „holder in due course. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In „Braja Kishore Dikshit V. Purna Chandra Panda" – AIR 1957 Ori. 153 the High Court held that the holder in due course under Section 9 has to satisfy the following three conditions-

- An endorsee becomes a holder in due course for consideration;
- He can become an endorsee before the amount mentioned in the promissory note became payable; and
- He should have no sufficient cause to believe that any defect existed in the title of the person from whom he was to derive his title.

As regard to the second condition the promissory note becomes payable either on demand or at maturity.

Question 43

Difference between holder and holder-in-due course.

Holder	Holder in due course
1. Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	1. Holder in due course possesses the instrument for consideration before maturity and in good faith.
2. Title of the holder is subject to title of the transferor.	2. Holder in due course gets a better title than transferor.
3. Holder may receive the instrument without consideration.	3. Holder in due course always receives the instrument for consideration.
4. Holder does not get certain privileges available to the holder in due course.	4. Holder in due course always gets privileges not available to holder.

Question 44
What are the different types of Instruments provided in NI Act?

There are various types of instruments mentioned in the NI Act as follows:
• **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 promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument
. • **Ambiguous instrument –** 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
. • **Instruments payable on demand –** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.
• **Inchoate stamped instruments –** Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being 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 mount intended by him to be paid there under.

Question 45
What is Notice? When notice is not essential?

Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored. In „Union bank V. Dina Nath" – AIR 1953 All. 637 it was held that this section was intended to confine the holder"s right of enforcing the liability to only those who are otherwise liable under the law and to whom notice has been given; it was not intended to enlarge the holder"s right so as to enable him to claim damages from persons against whom he has no remedy under the Act.

Notice – when not necessary?
Section 98 provides that in the following circumstances there is no requirement to issue notice-
• When it is dispensed with by the party entitled thereto;
• In order to charge the drawer, when he has countermanded payment;
• When the party charged could not suffer damage for want of notice;
• When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
• To charge the drawers, when the acceptor is also a drawer;
• In the case of a promissory note which is not negotiable;
• When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Question 46
Briefly narrate the recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes.

Briefly narrate the recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes. As the central government pushes for a cashless economy, legislative steps are under way to fortify other instruments of financial transactions, including cheques. With the objective of reducing delay in proceedings pertaining to dishonour of cheques and to provide interim relief to the payee in such cases, the Negotiable Instruments (Amendment) Act 2018 has been introduced in August, 2018. In a move to prevent unscrupulous elements from holding back payment through an often long-drawn litigation in cheque bounce cases, the government has come up with a series of amendments to the N. I. Act, 1881. This law was enacted to define and amend the law relating to promissory notes, bills of exchange, and cheques.

The Negotiable Instruments (Amendment) Act 2018 introduces a new clause which allows the payment of interim compensation to the aggrieved party as an immediate relief when the case reaches the court. In the statement of objects and reasons for the Act, the government points out that though the 1881 Act was amended from time to time to provide for the speedy disposal of cases relating to the offence of dishonour of cheques, it has been receiving several representations from the public, including from the trading community, relating to pendency of cheque dishonour cases."This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings," the statement says.

This delay has slowly eroded the faith of the traders in the use of cheques, it reasons. Injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

The purpose of the Act is to provide interim relief to the aggrieved party till the final solution of the cheque dishonour case in court, and to discourage frivolous and unnecessary litigation which would save time and money.

The new Section 143A provides for the court trying a cheque dishonour case under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant at the time of framing of charges. The interim compensation shall not exceed 20% of the amount of the cheque.

A second provision, Section 148, allows the Appellate Court to first order the party convicted in a cheque bounce case to deposit 20% of the of the fine or compensation awarded by the trial court. The above amendments will strengthen the credibility of cheques.

INDIAN PARTNERSHIP ACT, 1932

Partnership Act, 1932

Introduction

- whenever we want to do business, either we can do it alone or within the limitations of partnership law.
- when we combine people, we increase our resources, market reach, finance, customer base etc.
- However when we combine people there are high chances of dispute between partners, which will hamper growth and development of the partnership.
- When partnership agreement is written and registered, there are less disputes because everyone knows what to do what not to do.
- It is interesting to note that partnership agreement is not compulsory in nature, we can have a casual partnership without any paper work as well.
- It means partnership may be registered or unregistered but both are legal.
- The only problem is when the dispute arises, OUTSIDERS CAN SUE PARTNERS, BUT, PARTNERS CAN'T SUE OUTSIDERS AND EACH OTHER.

Origin of Partnership Act, 1932

- It was earlier a part of contract Act 1872 but later on section 239 to 266 were seperated.
- Contract law is universal in nature but partnership provisions are specific.
- Indian partnership Act is based upon English partnership Act 1890.

Applicability

Just like contract and sale of goods, partnership Act applies to whole of India excluding Jammu and Kashmir.

Effective Date

- Section 69 came into force on 1st october 1933.
- All other provisions came into force on 1st october 1932.
- Section 69 talks about registration of partnership in which it is written that what are the disadvantages of not taking registration.

What is Partnership?

- Section 4 defines the term 'partnership' as the
- relationship
- between persons
- who have agreed
- to share the profits
- of a business
- carried on by all
- or any of them
- acting for all.

Section 4 defines the term 'partnership' as the

Partnership is defined by a seperate section which is not in the trend. Generally all the definitions in the partnership Act or any law are in section 2 but not in this case. All the definitions of section 2 just explain the meaning of any word but this definition is explaining the nature of partnership as well. It is very interesting to note that minimum number of partners which is 2 is not written anywhere in the

act. So, we must analyse this definition to be of special importance.

Relationship

- Partnership is a relationship which is created not by birth but by agreement.
- It means it is contractual relationship and not blood relationship.
- Whatever may be the share of capital, profit will be divided equally.
- It is not necessary to distribute losses as well just because we are distributing profits.
- Due to relationship, new partnership can be admitted only if hundred percent partners agree but if someone retires, no approval is needed.
- Due to relationship, income, expense, asset, liability, receipt and payment, done by one person will belong to every person
- In simple words all the partners are agents of each other.
- It means activity done by one partner will bind

everyone else.

Between Persons

- Minimum number of partners are two.
- They may or may not be natural persons.
- It is interesting to not that maximum number of partners is also absent in partnership Act, 1932.
- As per section 464 of companies Act 2013, maximum number of partners will be prescribed by ministry of corporate affairs (MCA) under Central goverment.
- The same section further says that central goverment can decide any number but it cannot exceed 100.
- At present the limit is fifty partners.
- This maximum number, whether 50 or 100, doesn't apply on HUF because it is created by birth not by agreement.
- However, if two HUF or more come together to make a partnership, total number of members of HUF, cannot exceed 50.
- If total partners exceeds 50, we have three options which are as follows -

(1) Convert it into a company
(2) Reduce the number of partners
(3) If option 1 & 2 are not selected in 6 months, partnership firm will become illegal.

Who have agreed

- Partnership agreement is compulsory but it may or may not be written.
- When a partner comes in, he comes with free consent, which is called agreement.
- When a partner dies, his legal heir cannot become partner automatically without an agreement.
- Agreement can be modified any number of times but 100% consent is compulsory.

To share the profits

- sharing of profit means sharing of profit only, it is not compulsory to share the losses.
- We can have a partner in profits only but we cannot have a partner in losses only.
- It is true that partner receives profit but every person who receives profit doesn't become partner. For example an employee may be given some share of profit,

widow or widower of a partner may be given some share of profit, some agent may be given some share of profit, all of them are not partners.

- Profit can be distributed in any Ratio and not necessarily as per the capital contribution.
- If partners do not decide anything, profit will be distributed equally.

Of a business

- Business means any economic activity of commercial nature
- It can be trade or industry or services
- If there is a profit sharing without business, it is not partnership
- It is not necessary that business should be registered, business should be licensed, business should be large.
- It means profit sharing is not the criteria but business is the eight criteria to find out partnership.

Carried on by all

- All the partners have equal rights & duties.

- No one has much authority or less authority.
- NO partner is superior or inferior.
- It means EVEN IF ALL PARTNERS AGREE, THEY CAN'T TERMINATE OR EXPEL ANY PARTNER.
- If a removal is actually needed, dissolution is the best option.
- All partners have right to participate in the business of the firm but authorities of a partner can be increased or decreased subject to 100% approval.
- In simple words, every partner has all implied authorities but they can be altered subject to agreement

Or any of them

- ideally all partners should run the business collectively
- However they may authorise one or more partners to work on their behalf.
- Whether one partner runs or more than one partner run, person running the business should be partner and no one else.
- It means a ~~known~~ non partner cannot run the business.

- Even if employee is appointed to manage the business, liability will remain of the partners only.

Acting for all

- It is called mutual agency.
- In simple words, all partners are agent of each other.
- Activity done by one partner will bind all other partners
- In businesses other than partnership, profit sharing is present everywhere but this mutual agency is unique in partnership.
- In other words if a partner becomes unable to pay his dues, remaining partners will have to bear it.

True Test of Partnership

All elements of business in partnership are common with others like economic activity, capital contribution, goods and services, sharing of profits but there is a unique feature in partnership which is not present anywhere else and i.e the concept of mutual agency. One for all and all for one.

Meaning of Partner (Sec 4)

- Any person who have entered into partnership is

partner.

- Partner may be natural or artificial person

Firm and firm name

- Collective body of all the partners is called firm.
- The firm should have a business name so that all accounting can be done in that name.

June 2014 Ques[5][c]

Generally expulsion is not allowed but if it is written in the constitution, it is allowed.

Dec 2014 Ques[2][a]

whenever retirement takes place, retired partner of his legal heir after death can claim property share. Section 37 says if it is not settled on the date of retirement, 6% simple interest will apply

June 2015 Ques (2)[a]

As per the concept of mutual agency, creditor can demand whole money from a single partner. This single partner can recover proportionate amount from other partners

June 2015 Ques [2][c]

Whenever a change is required in partnership deed, it can be done by 100% consent of all the partners.

Dec 2015 Ques [2] [a]

Expulsion of a partner is not possible, if it is not written in the partnership deed.

Dec 2015 Ques [2] [c]

When the firm is unregistered, partners cannot sue other partners and outsiders However if the firm has been close, settlement of accounts will take place.

June 2016 Ques [2] [c]

Expulsion is possible only if it is already written in the partnership deed.

Dec 2016 Ques [2] [c]

Adultery is not a reason for dissolution.

~~Firm and Firm Name~~

Types of Partnership

(1) General Partnership
(2) Limited Partnership
(3) Partnership at will
(4) Particular Partnership

General Partnership

- It is the basic form of partnership.

- All partners have unlimited liability.
- Common assets of partnership will be used to pay the debts.
- If the common assets fall short partners will have to pay more money.
- It means personal assets of partner will also be liable in case of need.
- If a particular partner is unable to pay more money, he becomes insolvent and other partners will have to contribute.
- This is also called mutual agency relationship.
- It is true that all have unlimited liability but except for a minor partner.
- Generally minor should not be a partner but if he become partner, he will be partner in profits only.
- Minor is never liable whatever may be the condition.

Limited Partnership

- It is a modern concept.
- Partner come together but they do not have unlimited

liability.

- If the firm does not have enough money, partners will not pay more.
- Either all the partners have limited liability or only some of them.
- This partnership Act 1932 doesn't allow that everyone has limited liability.
- There must be one partner who should have unlimited liability so that creditors can be secured.
- In such case, partnership deed must be registered so that we can find out who has Unlimited liability.
- All the partners who have limited liability are not powerful enough to participate in the management.
- Limited liability partners will invest money, take their returns and go back home.
- All the management power will be with those partners who have unlimited liability.
- When limited partner retires or dies, there is no impact on the firm but when f unlimited partner retires or dies, partnership deed must be drafted again.

- Before 2008, limited partnership was not allowed but after the introduction of LLP Act 2008 it is allowed.

- This Act doesn't have provisions of Limited Partnership, they are contained in a seperate law called LLP Act, 2008.

Partnership at will

- whenever a partnership is created, it may be created for a fixed tenure or for a fixed purpose or without any time or purpose.

- If there is no fix time or fixed purpose, it will continue forever.

- Life of this partnership is dependent on will of the partners.

- They can continue or they can dissolve at any point of time.

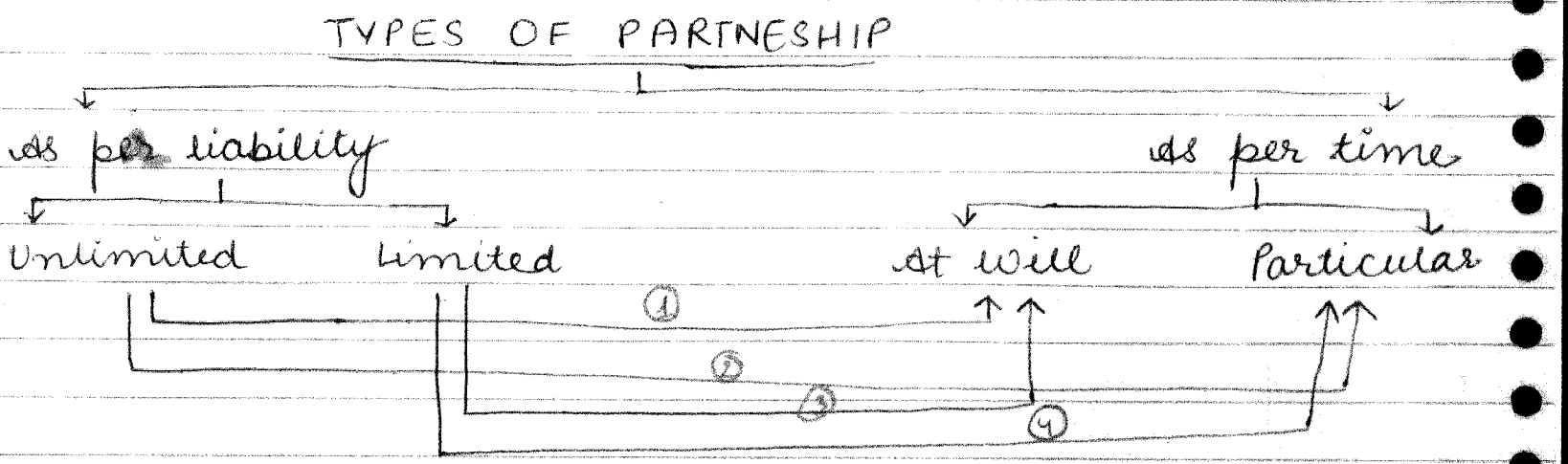
- any partner can take retirement at any point of time

- If nothing is written, every partnership is at partnership at will.

Particular Partnership

- It is also called Joint-Venture in simple terms.
- When partnership is created for a fixed time or fixed purpose, it is called particular partnership or Joint Venture
- Joint Venture has no seperate law and all the disputes are settled as per Partnership Act only.
- Whenever particular purpose or time period gets over partnership ends.

Summary of Types of Partnership



(1) Unlimited Partnership at will
(Liability Unlimited + Time Forever)

(2) Unlimited Particular Partnership
(Liability unlimited + Time fixed)

(3) ~~Liability~~ Limited Partnership at Will
(Liability limited + time forever)

(4) Limited Particular Partnership
(Liability limited + time fixed)

Types of Partners

(1) Working Partner or Active Partner
(2) Sleeping Partner or Dormat Partner
(3) Secret Partner
(4) Limited Partner
(5) Partner in Profits only
(6) Nominal or ostensible ~~po~~ or quasi partner
(7) Minor as a partner

- Active Partner

- If nothing is specified every partner is active partner
- such partner takes active participation in the management of firm.
- He is well known to all the outsiders.
- Whenever he retires or dies, public notice is compulsory.
- His contribution in the partnership is 100% and this 100% is known to others.

- **Sleeping Partner**
- He is also called inactive partner or dormant partner.
- He just provides capital and goes away.
- His name is present in the partnership deed but public doesn't know him.
- He is very much a partner, shares profits & losses, also have unlimited liability, only issue is that public doesn't know him
- When he retires or dies, public notice is not necessary
- **Secret partner**
- Law doesn't allow secret partner.
- If a partner is partner, his name should be present in the deed.
- A person who is behaving like a partner secretly is not tolerate by law
- A partner can be sleeping but not secret.
- Sleeping and secret both partners are not known to public but sleeping partner at least has his name

in the deed.

- India is not allowed to have secret partner

Limited Partner

- Liability of such partner is limited to the amount of capital invested by him.
- He is not personally liable for any losses or liability
- He can't take active participation in the business of the firm.
- His exit doesn't create any impact on the firm.

Partner in Profits only

- He is a partner who refuses to take losses in the firm
- It may be because he is minor, actively participates in the business, has great goodwill or any other reason.
- Generally a partner who doesn't get losses doesn't participate as well, but if partners agree they can allow his participation.

Nominal or ostensible or quasi Partner

- It is also called deemed partnership.
- Partnership relationship doesn't actually exist but it is deemed to exist.
- Sometimes a person says he is a partner where he is not, it is called partner by estoppels.
- Sometimes firm says that someone is its partner where he is not, he is called partner by holding out
- Partner by estoppel and holding out are actually called ostensible partners.
- In simple words, actual partnership is not present but situation is such that people are considering it as partnership
- In such case, people who are not partners, unnecessarily become liable to pay dues which do not belong to them.
- Partner by estoppel and holding out are also called nominal partner because they provide nothing but the name to the firm.
- There name is present in the partnership deed but they neither share profit nor losses.
- They come in trouble only when some outsiders files a case ~~on him~~ against them.

Partnership is minor as a partner

- Generally minor cannot be partner.
- However he can be taken participant in the profits of firm.
- He will never share losses or liability of the firm.
- When he becomes major, he will have to decide within six months of becoming major whether he wants to become partner or not.
- If he decides to become partner, he will share losses as well as liabilities from the date of becoming major
- If he decides not to become partner, settlement of accounts will be done for him and he will relive.
- If he doesn't decide anything in the last six months, he will automatically become partner.

Difference between Partnership & Company

Basis	Partnership	Company
Legal Entity	It doesn't have separate identity because partnership deed expires when a partner moves out	It has seperate identity because entry & exit of a member doesn't destroy the company.

Liability	Liability of partners is unlimited and they will have to bring more money if required.	Liability of shareholders is always limited to the amount of shares purchased by them. If they have already paid for their shares, they will not pay more.
Number of members	Minimum partner is 2, maximum partner will be prescribed by central government which cannot be more than 100 However at present it is 50.	In private company, minimum member 2, maximum 200, in public company minimum member 7 maximum unlimited.
Transfer of shares	A partner cannot transfer his shares to anyone without the permission of other partner	Shareholder of a private company can also not transfer his share but shareholder of public co. can transfer his share without any permission.
Management	It should be run by partner only, whether one or some or all.	There is seperation of ownership & management. Shareholder put their money which is managed by directors, appointed by shareholders.

Relationship	All partners are agents of each other. They collectively share any loss or liability	There is no such relationship in the company and every shareholder pay only for his dues.
Profit distribution	Profit distribution is compulsory which can be done as per partnership deed or it can be distributed equally.	Profit distribution is absolutely voluntary, to be decided by directors
Remedy to creditors	Creditors can sue in their individual capacity against all the partners	Creditors can sue only against company not against the shareholders because company has seperate legal identity.
Audit	Audit is absolutely voluntary but desirable	It is absolutely compulsory whether the company is small or large
Dissolution	It is dissolved whenever a partner takes exit, even if other partners want to continue.	It is dissolved only when ordered by court or tribunal.

Difference between Partnership & Limited Liability Partnership

Basis	Partnership	Limited Liability Partnership
Legal Entity	It does not have seperate legal identity which means	It has seperate legal identity which means there is no

	life of partnership is dependent on life of partner	It has impact of entry of or exit of a partner on the firm.
Liability	liability of partners is unlimited and they can be made personally liable.	liability of partners is limited and they are not liable to pay from their personal property.
Number of members	Minimum partners is 2, maximum partners can be upto 100 but present limit is 50.	Minimum partners is 2 maximum partners is unlimited.
Entering into contracts	Contract can be made in the name of partners only because partnership has no seperate existence.	contract can be made in the name of the firm because LLP has seperate existence.
Compliance of Law	It has nominal compliance which means lesser paper work is required, even the registration is voluntary.	It has extreme compliance where even the small issues are communicated to goverment.
Dissolution	It is dissolved whenever a parter takes exit because it doesn't have seperate existence	It is dissolved only when approved by court or tribunal.

Difference between Partnership & HUF

Basis	Partnership	Hindu Undivided Family
Relationship	This relationship is created by agreement between partners.	This relationship is automatically created by birth
Management	It can be managed by any or all partners.	It can be managed only by head of the family who is called Karta.
Share of Profits	Profit is shared compulsarily as per agreement	There is no sharing of profit because all profit is held by Karta.
Property	It is created by Partners themselves so it belongs to all.	It is inherited by the family members so, it belongs to all
Authority	Every partner has equal authority provided it is not changed	Only Karta has authority and all other members just follow Karta.
Dissolution	It is dissolved whenever partner takes exit because it does not have seperate existence.	When Karta dies, there is no impact on the HUF because some other member become Karta automatically.

Determining existence of Partnership

- Every business carried on by few people may or may not be partnership.

- There are some elements which must be present in every partnership but out of all of them mutual agencies is most important.

- Whether we open company or HUF or LLP or cooperative society, business is everywhere, economic activity is everywhere, profit activity is everywhere, capital contribution is everywhere but one person paying for another person is not present anywhere else than in partnership.

- This is unique feature where financial difficulties of one partner affects all other partners.

- So, to determine the existence of partnership, all features must be verified but mutual agencies must be compulsarily verified.

Questions on determination of Partnership

1. No, it is a case of co ownership because giving residential property on rent is not a business activity. Partnership cannot exist without existence of business.

2. Yes, it has become partnership now because the house is now converted into a hotel which is a business activity. Lack of business is rectified here.

3. No, it is not a partnership. It is co-ownership because two persons are buying something and a purchase without sale is not a business.

4. No, it is not partnership, it is employer-employee relationship because a person is giving wages to another person.

5. No, it is not partnership. It is co-ownership of the ship. They are buying but not for the commercial purpose.

6. No, it is not partnership. It is author-publisher relationship. Entire expense, losses and liability belong to publisher only, so, there is no mutual agency.

7. Yes, it is partnership because the purchase is done to do the sale in joint account.

8. No, members of HUF are not partners because they do not fulfill the requirement of partnership by agreement.

9. Option (c) is correct because 6 months grace is given from the date of becoming major, whether he wants to become partner or not.

10. No, it is not compulsory for a minor turned major to give public notice because even if he doesn't give any notice, he become partner automatically after 6 months.

11. If he doesn't give any public notice, he automatically becomes partner after 6 months from the date of becoming

major. he will be personally liable from the date of becoming major.

Rights and liabilities of partners

(1) Duties of Partners

- carry on business - All the partners will have to do perform business activities for the common advantage of all the partners. They should try to bring maximum profit for the firm.

- Just and faithful - When we work together, we have to answer others about our activities. We have to be honest, trust worthy and should be faithful to each other. We know that activity done by one will affect everyone. So, we cannot afford to be fraudulent.

- Provide true information and accounts - When every partner participates in the business, it is natural that he receive some information or money, which should surrendered to the firm. There should be no concept of private profit or private information. Everything belongs to every partner.

- Indemnify the firm - Indemnify means to save someone. If there is any loss to the firm because of fraud done by such partner, he will compensate for such losses. If and only if he is unable to pay, other partners will pay.

(2) Mutal Rights and Duties of Partners

- All partners are equal status and relationship.
- There can be no situation in which one partner is instructing another partner.
- So, the solution is to have an agreement. whether expressed or implied to divide duties.
- Such contract will specify duties of everyone so that there will no conflict in future.
- Such contract can be altered upon consent of all the partners
- Duties of one partner will automatically become rights of another partners.
- This is the reason they are called Mutual Rights & Duties.

(3) Mutual Rights and Liabilities

- Any partner cannot demand any remuneration like salary or commission for his services given to the firm. However, if other partner decide to pay some salary to other partner, it is allowed.
- If nothing is specified in the contract, all partners will have right to share profits equally and will have liability to share losses equally. As per law, it is not necessary

to distribute losses equally just because profits are being shared equally.

- If and only if partner deed says so, interest on capital can be given. Rate of interest will be decided by partners. However, interest should be paid only from the available profits. If there are losses, interest cannot be paid.

- If partnership deed provides for interest on loan given by partner, it will be given at the rate prescribed by deed. However if the partnership deed is silent, rate of interest shall be 6% simple interest p.a.

- Firm will save all the partners which means the firm will always pay on behalf of partners. It does not matter whether it is normal situation or emergency situation.

- Similarly partner will save the firm which means he will compensate wherever there is financial trouble in the firm either because of himself or all the partners.

Property of the firm

- Property of the firm means amount invested in the firm either in cash or in kind.

- Property also includes assets acquired by firm during the course of business.

- It also includes goodwill even though it is fictitious asset.

- When the asset belongs to the partnership firm, all associated liabilities also belong to the firm.

- All the property of the firm should be used only for the business of the firm.

- As the firm doesn't have seperate existence, firm means collective name of all the partners, which means whenever the firm is dissolved, property shall be distributed.

- If some partner is retiring, he will claim and will be given his share in the property.

Personal Profits

- Any profit coming to a particular partner privately should be surrendered to the firm because it must be accrued because of firm name

- Any profit generated because of goodwill of the firm cannot be retained by a single partner ~~to~~

- However if such income is generated because of personal art and skill, it will belong to partner.

- In simple words, money generated by common activity belongs to every partner and money coming out of individual distinct capability will belong to partner.

Implied Authority

- Implied means something which need not to be prescribed by someone.
- Implied can be authority or duty. Anything to be always done is a duty, anything to be always claimed is a right.
- Implied authority in partnership means that every partner has authority to bind the firm by his activities.
- However, implied authority of a partner doesn't include following activities.

- submit a dispute relating to the business of the firm to arbitration.
- open a banking account on behalf of the firm in his own name.
- compromise or relinquish any claim or portion of a claim by the firm.
- withdraw a suit or proceeding filed on behalf of the firm.
- admit any liability in a suit or proceeding against the firm.
- Acquire immovable property on behalf of the firm.

- transfer immovable property belonging to the firm or
- enter into partnership on behalf of the firm.

- If all partners agree, implied authority can be extended and can be restricted which means if a partner is generally not allowed to do specified 8 activites, such list can be modified subject to approval of all the partners.

Authority in emergency

- It is true that partner cannot perform eight activities, which are beyond the scope of implied authority.

- However if a partner performs any such activity in case of emergency to save the firm, it is allowed to do so.

- The only condition is that the activity done for common benefit should not be illegal.

Rights of Transferee of a Partner's Interest

- Whenever a partner wants to transfer his share of profit to some outsider, it is allowed without asking other partners.

- The person who receives such share does not become partner in the firm.

- The person who receives such share can only demand the amount agreed to be paid to him.

- Transferee of such share will not be entitled for the following rights:

(a) interfare in the business conduct.
(b) demanding copy of accounts.
(c) Inspection of books of accounts.

- Transferee cannot challenge validity of accounts and he has to accept whatever profit is produced by the firm.

- If the firm is dissolved, profit and capital both will be distributed in the same manner.

Formation of Partnership

- Decide about number of partners and find out who all will be partners.

- Decide about name of the firm depending upon availability and legal restrictions

- Decide about the business to be conducted.

- Decide total capital & per person capital.

- Prepare partnership deed, which should be in writing, signed and registered.

- Open bank account in the name of the firm.

- Apply for PAN to be issued by income tax department.
- Take registration with authorities of direct and indirect tax.
- If everything is verified and found correct, registrar will issue certificate of registration.

Reconstitution of the firm

- Whenever there is a change in partnership agreement, old agreement expires and new agreement is entered into.
- Such new agreement does not actually make a new firm but it changes the relationship among parteners.
- In practical sense, a new stamp paper shall be purchase, in which new agreement will be written, will be signed and registered again.
- It means the firm is not dissolved but old relationship is dissolved.
- It can happen whenever agreement changes and it does'nt matter whether there is any entry or exit of a partner.
- Following are the situations in which reconstitution takes place:

(a) Change in profit sharing ratio of existing partners.
(b) Admission of a new partner.
(c) Retirement of existing partner.
(d) Death of a partner.
(e) Amalgamation of two partnership firms.

Change in Profit sharing Ratio

Whenever partners change their profit sharing Ratio, there is no entry and exit but still there is reconstitution. It is because rights and liabilities are changing.

Admission of a new Partner

Whenever a new partner is admitted, existing partners will have to make adjustments in the existing PSR. There will be a compulsory change in the rights and liabilities of partner. So, admission of a partner is reconstitution

Retirement of an existing Partner

Whenever a partner retires, the firm continues with the remaining partners, whether with a new partner or without a new partner. However partnership deed has to be altered because the partners are no more the same. Reconstitution because of retirement can take place in following situations:

(a) Mutual Consent can be taken for retirement in which all partners agree to decide about the future of a partner. It is not expulsion decided by majority, it is the common consent given by everyone.

(b) Sometimes partnership deed may have a predetermined condition regarding the retirement. It can be an event in which it is already decided that whenever such agreement or event takes place, partner will retire.

(c) A particular partner may give a voluntary notice to leave the firm. This voluntary notice will work as resignation but known as retirement.

Whenever retirement takes place, profit & loss account will be prepared upto the date of retirement. Any profit shall be added to partners capital A/c and any losses shall be deducted from Partners capital A/c. If there is positive balance in the capital A/c, it will be paid to partner and if there is deficiency or negative balance, it will be recovered from partner. Such payment can be done in lump sump or in installments. Any delay in the payment will attract 6% p.a simple interest for the period on delay. Interest will be computed from the day next to the date of retirement.

When retirement takes place, the partners remain liable for anything done when they were partners. Retired partner was a partner earlier so anything done in this tenure is also his responsibility. However he will not be

liable for anything done after his retirement.

Death of a Partner

Whenever a partner dies, his capital A/c is closed. If it is a surplus balance, it will be paid to legal heir of the partner. If there is a negative balance, it will be taken ~~of~~ from legal heir. Legal heir will pay only if there is sufficient asset inherited by him. Suppose he did not inherit any asset, he is not liable to pay anything.

Amalgamation of two partnership firms

A + B = A (B is acquired by A)
A + B = B (A is acquired by B)
A + B = C (Merger)

Acquisition + Merger = Amalgamation
↓ ↓
In the nature of purchase | In the nature of Merger

When one firm acquires another firm or two firms create a new firm, this is called amalgamation of partnership firm. During the process of amalgamation, at least one partnership firm loses its existence. If only one is losing this is acquisition. However if both are losing their existence, it is Merger. In any case, legal procedure under partnership law are same.

In the process of amalgation, following activities are conducted:

(a) Revaluation of assets and liabilities
(b) Transferring reserves to old partner's capital Account.
(c) Valuation and treatment of goodwill.
(d) Valuation and treatment of assets and liabilities.

Rights of outgoing Partners

- When a partner comes out from the firm., he is entitled for settlement of accounts.
- It should be done ~~e~~ immediately upon retirement.
- Any positive balance will be paid out to him and negative balance will be recovered.
- If the payment is late, it will attract 6% p.a simple interest.

Registration of Firm

- Registration of Partnership is absolutely voluntary but it is advised to ~~x~~done.
- For the registration following information is communicated to the registrar of firms.

(a) Name of the firm.

(b) Principle place of business
(c) other places of business
(d) Date of joining the partnership
(e) Name and details of all partners.
(f) Duration of the partnership

- Name of the partnership should not match with existing firm.

- Name of the partnership should not have restricted words such as crown, emperor, empress, empire, imperial, King, Queen, Royal etc.

- All the documents shall be handed over to registrar either by post or by hand.

- Registrar will issue certificate of registration which will be evidence that registration is done.

- Whenever there are changes in the particulars of partnership, it will be informed to registrar within 15 days.

Effect of Non Registration

- If the registration is not done, it is absolutely legal.

- However there will be certain restrictions being imposed on the partners in case of non registration.

- In case of unregistered firm, partners cannot sue each other

as well as outsiders.

- However, outsiders can sue the partners.
- Even if the firm is unregistered, all the legal rules imposed in India must be implemented and all the legal rights can be enforced.
- ∴ Even if the firm is unregistered, settlement of accounts must take place upon dissolution.

Dissolution

- Dissolution means end of the life of partnership.
- All the assets are realised and liabilities are paid off.
- During dissolution, partners capital Account are finally settled.
- Dissolution shall be informed to registrar within the same 15 days period.
- Public Notice of dissolution is also compulsory.
- Dissolution can take place in the following manner

(a) Mutal consent, in which partnership was at will but partners don't want to carry it further.

(b) Compulsory dissolution where it is impossible to carry on

the firm. It will include death, insanity or insolvency of all partners or all but one partner

c) Happening of certain contingency such as natural disaster, act of terrorism etc.

d) Dissolution by court in which some activity has become illegal or there is some change in law or there is something opposed to public policy etc.

e) Dissolution by notice in which one particular partner is giving notice to dissolve the firm and all others are getting ready to this notice

In any case, legal formalities are same and there are no procedural differences

Liabilities of Partners after Dissolution

- All the partners are liable and will remain liable for all the actions taken place before dissolution.
- Public notice should be given upon dissolution so that liability can end after dissolution
- It means liability will not end on dissolution, it will end on public notice.

Rights of Partners after dissolution

- Every partner is entitled to demand settlement of accounts.
- Every partner has right to share any surplus arising on dissolution.

Mode of settlement

- Settlement means making payments to all outsiders and insiders. However there should be some serial order to make the payments in which settlement will be done. Following is the serial order.

(a) First, pay to third parties.

(b) Then, pay for loan given by partners.

(c) Then, pay the credit balance of partner's capital account to all partners.

(d) Then, pay any surplus, if any, in the profit sharing ratio.

Return of Premium

When the partner takes admission, he sometimes make payment of premium over and above the amount of capital. So, when the firm is dissolved he has right to claim the premium back. It shall be given to him provided we have enough money. However premium will not be paid back

in following two situations -

(a) If the dissolution is taking place due to his own misconduct.

(b) If it was decided by mutual consent not to pay back any premium.

Agreements in Restraint of Trade

When partnership firm is dissolved, partners can put a restriction on all partners or on some partners regarding the business to be conducted by them. Restrictions can be imposed regarding use of name, place of business, customers of the firm and other resources of the firm.

Such restrictions are allowed but they should be reasonable enough otherwise it will be against contract Act 1872. If the partner finds restrictions to be unreasonable, he can sue remaining partners.

Goodwill

- Goodwill is nothing but an asset, although fictitious.
- Goodwill can be sold and purchase like any other property.
- If the goodwill is sold, seller cannot use firm name, cannot serve customers of the firm and cannot represent himself belonging to the firm.
- Goodwill should be valued as per the past business performance

	of the Contract Act,1872 and not saved by Section 54 because the agreement subjected the partner to a species of slavery as far as the insurance was concerned.
Goodwill	Section 55 provides that after the dissolution of a firm the goodwill shall be included in the assets and it be sold either separately or along with other property of the firm. Where the goodwill of the firm is sold a partner may carry on a business competing with that of the buyer and he may advertise such business, subject to agreement between him and the buyer, he may not- • use the firm name; • represent himself as carrying on the business of the firm; or • solicit the custom of persons who were dealing with the firm before its dissolution. Goodwill of a business is the property of the firm and is often a very valuable asset. In a suit for dissolution, while taking accounts goodwill of the firm should be included in the assets and should be brought into common account. The goodwill of a business is inclusive of positive advantage such as carrying on the commercial undertaking at a particular place and in a particular name and also its business connections, its business prestige and several other intangible advantages with a business may acquire.

Fill in the blanks

1. Partnership is the creation of _____.

2. The liability of a partner in a firm is _____.

3. Nominal partner is of two types, _____and_____.

4. Maximum no. of partners in banking is_____.

5. In particular partnership a person may become a partner with another person in particular _____.

6. Partner is the _____of the firm for the purpose of the business of the firm;

7. Where a partner in a firm is adjudicated as insolvent, he ceases to be a partner on the date on which _____.

8. A partnership firm is to be registered with _____.

9. Partnership at will is a partnership formed for_____period.

10. A firm is a collective of _____partners.

Choose the correct answer

1. Who can take active part in the management of the firm?
(a) Sleeping partner;
(b) Secret partner;
(c) Working partner;
(d) Nominal partner

2. A new partner can be introduced as a partner into a firm-

(a) At the discretion of active partner;
(b) At the decision of partners authorized in this behalf;
(c) With the consent of all existing partners;
(d) None of the above.

3. A partner may retire-
(a) With the consent of all partners;
(b) In accordance with an express agreement by the partners;
(c) By giving notice in writing to all partners;
(d) Any one of the above.

4. Intimation of the reconstitution of change in a registered partnership is to be given to the Registrar of firms-
(a) No time limit;
(b) Within 30 days;
(c) Within 60 days;
(d) Within 90 days.

5. A firm shall not contain any name-
(a) King;
(b) Queen;
(c) Empire;
(d) All the above.

State whether true or false

+

1. A sleeping partner is not entitled to share profits of the firm.

2. Partners in profits only share in the profits of the firm but not losses.

3. Audit is compulsory for the partnership firm.

4. Creditors of a firm can proceed against the partners jointly and severally.

5. Partnership firm is a separate legal entity.

6. The death of karta will not lead to the dissolution of the HUF business.

7. Every partner has a right to take part in the conduct of the business.

8. A partner is not required to indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm.

9. An advance by a partner to a firm is not treated as increase of his capital.

10. If a partner derives any profit for himself from any transaction of the firm, he shall account for the profit and pay it to the firm.

11. An outgoing partner may, carrying on a business, use the firm name.

12. After the dissolution of a firm the goodwill shall be included in the assets and it be sold either separately or along with the property.

13. If a firm closes a branch or open a branch the same should be intimated to the Registrar of Firms.

14. A unregistered firm can file a suit to enforce a right, arising from a contract, in any court against any third party.

15. A minor has to elect, on his attaining or majority as to become a partner or not.

Model Questions

1. What are the essential ingredients for the constitution of a partnership?
2. Write a note on different types of partners.
3. Differentiate the partnership from a company.
4. What are the differences between partnership and limited liability partnership?
5. In which way the partnership is different from Hindu Undivided Family?
6. Describe the duties and rights of partners.
7. Write a note on implied authority of a partner of a firm.
8. Whether a partner's interest may be transferred to another person? If so what are the entitlements of the recipient?
9. Minor as a partner – discuss his rights and liabilities.
10. What are the rights of outgoing partners?
11. What are the various types of dissolution of a firm? Write a note on them.
12. What are the rights and liabilities of partners after dissolution?
13. Describe the procedure for registration of a firm.
14. What are the effects of non registration of a firm?
15. Write note on alteration in firm name or place of business.

Answers:

Fill in the blanks

1. Contract;
2. Unlimited;
3. Partner by estoppel, partner by holding out;
4. 50; 5. Adventure or undertaking;
6. Agent;
7. The order of adjudication is made;
8. Registrar of firms;
9. An indefinite;
10. Partners.

Choose the correct answer

1. E;

2. C;

3. D;

4. A;

5. D.

State whether true or false

1. FALSE;

2. TRUE;

3. FALSE;

4. TRUE;

5. FALSE;

6. TRUE;

7. TRUE;

8. FALSE;

9. TRUE;

10. TRUE;

11. FALSE;

12. TRUE;

13. TRUE;

14. FALSE;

15. TRUE.

SCNNNER Question:

Question: 1
2014 - June Briefly explain the difference between Partnership and Co-ownership. (4 marks)

Answer:
Difference between Partnership and Co-ownership

	Basis of Distinction	Partnership	Co-ownership
1.	Agreement	It arises from an agreement.	It may or may not arise from an agreement.
2.	Business	It is formed to carry on a business.	It may or may not involve carrying on a business.
3.	Profit or Loss	It involves profit or loss.	It may or may not involve profit or loss.

4.	Mutual agency	Partners have a mutual agency relationship.	Co-owners do not have a mutual agency
			relationship.'
5.	Name of persons involved	The persons who form partnership are called partners.	The persons who own some property jointly are called owners..
6.	Maximum limit	The Maximum limit of partners is 10 for a banking business and 20 for any other business.	There is no maximum limit of owners.
7.	Transfer of interest	A partner cannot transfer his sha'a to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners.
8.	Right' to claim partition	A partner has no right to claim partition of property but he can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
9.	Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

Question: 2

2013- **Dec** [3] **Who is a Partner by "Holding Out" or "Estoppels?** **(2 marks)**

Answer:

If any person behaves and/or poses or presents in such a way that others consider him to be a partner, he will be held liable to those persons who have been misled, suffered or lent finance to the firm on assumption that he is a partner. Such a person is known as "Partner by Holding out or Estoppels." He is not a true partner and he is not entitled to any share in the profit in the firm.

Question: 3

2015 - June [2] What tests would apply for determining the existence of partnership? Discuss. **(3 marks)**

Answer:

• As must be clear from the discussion of various elements of partnership, there is no single test of partnership.

• For ejxample, in one case there may be sharing of profits but may not be any business, in the other case there may be business but there may not be sharing of profits, in yet another case there may be both business and sharing of profits but the relationship between persons sharing the profits may not be that of principal and agent. And in either case, therefore, there is no partnership.

• Thus, all the essential elements of partnership must coexist in order to constitute a partnership.

• To emphasize this fact, **Section 6** expressly provides that "in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be given to the real relation between the parties, as shown by all relevant facts taken together."

• Thus, the existence of partnership has to be determined with reference to the real intention of the parties, which must be gathered from all the facts of the case and the surrounding circumstances.

Question: 4

2016- **June** [2] **A partner is not an agent of other partners in a partnership firm.** **(2 marks)**

Answer:

Incorrect: The basis of the partnership is mutual agency, hence a partner is an agent of all other partners.

Question: 5
2017- June [3] What are the rights of outgoing partners? (9 marks)

Answer:
Rights of outgoing partners
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not:

• use the firm name;

• represent himself as carrying on the business of the firm; or

• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may 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 the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option:

• 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 6% per annum on the amount his share in the property of the firm.
Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is iiable to account under the provisions of this section.

Question: 6
2014- June [5] A, B and C were partner in a firm of drapers. The partnership deed authorized the expulsion of a partner when he was found guilty of flagrant breach of duty. A was convicted of travelling without ticket. On this ground, he was expelled by the other partners B and C. Is the expulsion justified? (3 marks)

Answer:
Yes, the expulsion is justified. In this case, the partnership deed authorized expulsion on the ground of flagrant breach of duty. Doing an act which brings a partner within the penalties of criminal law is flagrant breach of duty. Also, the expulsion decision was taken by majority of partners ***(Carmichel Vs. Evans (1904) 90 LT573).***

Question: 7
2014 - Dec [2] A, B, C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from firm and dies after 15 days. B, C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? (3 marks)

Answer:
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 entitled to claim either.

(a) such shares of the profits earned after the death or retirement of the partner which is attribute to the use of his share in the property of the firm; or

(b) interest at the rate of 6 per cent per annum on the amount of his share in the property.
Based on the aforesaid provisions of the **Section 37 of the Indian Partnership Act, 1932** in the given problem, A's representative, at his option, can claim:

(i) the 20% shares of profits (as per the partnership deed); or

(ii) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Question: 8

2015 - June [2] (i) Rohit and Anurag are partners in a firm. They borrowed a sum of ` 10,000 from Parul. Later on, Rohit becomes insolvent but his assets are sufficient to payback the loan. Parul compels Anurag for the payment of entire loan. Referring to the provisions of the Indian Partnership Act, 1932, examine the validity of Parul's claim and decide as to who may be held liable for the above loan. (3 marks)

(ii) Arun, Varun and Tarun started a Kirana business in Chennai on 1st January, 2012 for a period of five years. The business resulted in a loss of ` 20,000 in the first year, ` 25,000 in the second year and ` 35,000 in the third year, Varun and Tarun wish to dissolve the firm while Arun wants to continue the business. Advise Varun and Tarun. (2 marks)

Answer:

(i) • The present problem is concerned with the contractual liability of the Partners. As stated in the **Section 25 of the Indian Partnership Act, 1932,** in partnership the liability of the partners is unlimited.

• The share of each partner in the partnership property along with his private property is liable for the discharge of partnership liabilities.

• The liability of the partners is not only unlimited but is also stated that a partner is both jointly and severally liable to third parties.

• However, every partner is liable jointly with other partner and also severally for the acts of the firm done while he is a partner.

• On the basis of above provisions, Parul can compel Anurag for the payment of entire loan. Anurag must pay the said loan and then he can recover the share of Rohit's loan from his property.

(ii) As per provisions of Sec. 44(f) of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the Court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun -to dissolve the firm.

Question: 9

2015 - Dec [2] Akash, Ashish and Anil were partners in a firm. By his willful neglect and misconduct Anil caused serious loss to the business of the firm. After several warnings to Anil, Akash and Ashish passed a resolution expelling Anil from the firm. By another resolution they admitted Abhishek as a partner in place of Anil. Anil objects to his expulsion as also to the admission of Abhishek. Is he justified in his objections?

Answer: (3 marks)

• A partner may be expelled from a firm by majority of the partners only if,

(a) The power to expel has been conferred by contract between the partners, and

(b) Such a power has been exercised in good faith for the benefit of the firm.

• The partner who is being expelled must be given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion. Yes, Anil is justified in his objections.

• In the absence of an express agreement authorizing expulsion, the expulsion of a partner is not proper and is without any legal effect.

• **[Section 33(1)]** Anil's objection to the admission of Abhishek is also justified as a new partner can be admitted only with the consent of all the partners.**[Section 31 (i)]**

Question:10
2015- Dec [2] Mayur and Nupur purchased a taxi to ply it in partnership. They had done business for about a year when Mayur, without the consent of Nupur, disposed of the taxi. Nupur brought an action to recover his share in the sale proceeds. Mayur's only defence was that the firm was not registered. Will Nupur succeed in her suit? (3 marks)
Answer:
As per **Section 69(3)** of Indian Partnership Act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.
Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.
Section 69(3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

Question: 11
2016 - June [2] ABC & Co., a firm consists of three partners A, Band C having one- third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act. (5 marks)

Answer:
Expulsion of a partner (Sec. 33):
Expulsion of a partner is another event necessitating reconstitution of a firm. A partner may be expelled from a firm if the following conditions are satisfied:

(a) expulsion should be as per the express provisions in the agreement;

(b) power of expulsion should be exercised by majority of partners;

(c) expulsion should be in good faith.

Only when all the above three conditions are satisfied a partner can be expelled from a firm.
As stated above expulsion should be in good faith. The test of good faith may be:

(i) expulsion is in the interest of the firm

(ii) expelled partner has been given notice

(iii) an opportunity of being heard has been afforded to'the partner.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed. Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as befbre.

Question: 12
2016 - Dec [2] X and Y were partners carrying on a banking business. X had committed adultery on several women in the city and his wife had left on this ground. Y applied to the court for dissolution of the firm on this ground. Will he succeed? (5 marks)

Answer:
As per **Section 44(c) of Indian Partnership Act, 1932** sometimes, a partner is guilty of misconduct. When the Court is satisfied that the misconduct adversely affect the partnership business the Court may allow the dissolution of the firm. Y will not succeed. In this case, though X is guilty of misconduct but his misconduct does not have any adverse affect on their business as bankers ***[Snow v. Milform (1868) 18 LT142],***

In the above case, the Court observed that how can it be said that a man's money is less safe because one of the partner commits adultery. It was further observed that in those cases where the moral conduct of a partner would affect the firm business, it can be a ground for dissolution of the firm, e.g. where a medical man had entered into

partnership with another and it was found that his conduct was very immoral towards some of his patients, the firm can be dissolved on the ground of misconduct by the partner.

MTP Question

MTP June 19
Question:13. What are the rights of outgoing partners?

Answer:
Rights of outgoing partners
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-
• use the firm name;
• represent himself as carrying on the business of the firm; or
• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may 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 the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

• 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 6% per annum on the amount his share in the property of the firm. Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

MTP Dec 18
Question:14. State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. 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.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

MTP Dec 18
Question:15 Write a note on: Restrictions on the implied authority of the partner
Restrictions on the implied authority of the partner

The authority of a partner to bind the firm, conferred by Section 22 of Indian Partnership Act, is called his implied authority. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
 submit a dispute relating to the business of the firm to arbitration;
 open a banking account on behalf of the firm in his own name;

- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm.

MTP June 18

Question:16 Elucidate the steps to form a partnership. Does admission of a partner lead to reconstitution of a partnership firm?

Steps to form a partnership

- The first step is to decide the number of partners of a firm.
- Then decide to who are the partners of the firm, considering the limit envisaged in the Act;
- The name of the partnership firm is selected subject to the provisions of the partnership Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner;
- Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This documents prescribes the a to z of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partners;
- Open bank account in the name of the partnership firm;
- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licences from the respective authorities for the conduct of the business;
- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
- The Registration certificate is the conclusive evidence of the formation of the partnership firm

Admission of new partner

Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. For example, Hari and Haqque are partners sharing profit in the ratio of 3:2. On April 1, 2013 they admitted John as a new partner with 1/6th share in the profits of the firm. In this case, with the admission of John the firm is reconstituted.

The new partner is entitled the following rights –

- The right to share in the assets of the partnership firm; and
- The right to share the profits in the business.

The following are to be taken care of while admitting a new partner –

- Computation of new profit sharing ratio and sacrifice ratio;
- Accounting treatment of goodwill;
- Revaluation of assets and liabilities;
- Treatment of undisbursed profits and accumulated losses;
- Adjustment of capital accounts

MTP June 17
Question:17 Write a note on: Mode of settlement of accounts between partners

Mode of settlement of accounts between partners

Section 48 provides the mode of settlement of accounts between the partners after the dissolution. In this regard, the following shall be observed, subject to the agreements by the partners -

1. 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;

2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order-

• in paying the debts of the firm to the third parties;

• in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;

• in paying to each partner ratably what is due to him on account of capital; and

• The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profit.

MTP June 17
Question:18 Write a note on: Restrictions on the implied authority of the partner

Restrictions on the implied authority of the partner
The authority of a partner to bind the firm, conferred by Section 22 of Indian Partnership Act, is called his implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm.

MTP June 17
Question 19 State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. 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.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Revisionary Question

Revisionary Dec 18

Question20 Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ` 10,000, ` 5,000 and ` 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ` 7,000. Comment on the settlement of this partnership Account.

The deficiency of capital (which must be regarded as loss) being ` 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. ` 3,000. After this is done, the assets then available, ` 7,000 + 9,000 or 16,000 will be distributed among the partners with the result that each will have suffered a loss of ` 3,000.

In actual practice, it will not be necessary for Sunil and Bikash to pay 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is 1,000 only will pay ` 2,000 out of 9,000 with the firm. Sunil will take 7,000 and Bikash 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency 3,000 each and Rishi cannot, Sunil and Bikash will share ` 13,000, i.e. 7,000 plus 6,000 in the proportion of 10,000: 5,000. Sunil will suffer a loss of ` 4,333 in all and Bikash 3,667.

Question:21 How can the existence of partnership be determined.

Section 6 provides that in order to determine –

• whether a group of persons is or is not a firm; or

• whether a person is or is not a partner in a

form regard shall be had to the real intention between the parties, taking into the facts together.

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not make such persons as partners.

The receipt –

• of a share of the profits of a business; or

• of a payment contingent upon the earning of profits; or

• varying with the profits earned by a business,

by a person does not of itself, make him a partner with the persons carrying on the business.

The receipt of such share or payment –

• by a lender of money to persons engaged or about to engage in any business;

• by a servant or agent as remuneration;

• by the widow or child of a deceased partner, as annuity, or

• by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof does not make the receiver a partner with the persons carrying on the business.

Revisionary Dec 18

Question 22 Write short notes on: Rights of outgoing partners

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

• use the firm name;

• represent himself as carrying on the business of the firm; or

• solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may 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 the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

• 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 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

Revisionary June 2018

Question:23 Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ` 10,000, ` 5,000 and ` 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ` 7,000. Comment on the settlement of this partnership Account.

The deficiency of capital (which must be regarded as loss) being 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. 3,000. After this is done, the assets then available, 7,000 + 9,000 or 16,000 will be distributed among the partners with the result that each will have suffered a loss of 3,000.

In actual practice, it will not be necessary for Sunil and Bikash to pay 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is 1,000 only will pay 2,000 out of 9,000 with the firm. Sunil will take 7,000 and Bikash 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency 3,000 each and Rishi cannot, Sunil and Bikash will share 13,000, i.e. 7,000 plus ` 6,000 in the proportion of 10,000: 5,000. Sunil will suffer a loss of ` 4,333 in all and Bikash 3,667.

Question: 24 State the rules of partnership by holding out, as per Indian Partnership Act, 1932

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. 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.

2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Revisionary June 2018

Question:25 Write short notes on: Admission of new partner

Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management

of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. The new partner is entitled
the following rights-
 The right to share in the assets of the partnership firm; and
 The right to share the profits in the business.

The following are to be taken care of while admitting a new partner –
 Computation of new profit sharing ratio and sacrifice ratio;
 Accounting treatment of goodwill;
 Revaluation of assets and liabilities;
 Treatment of undisbursed profits and accumulated losses;
 Adjustment of capital accounts.

Workbook Question

Question 26 What is partnership? State the difference between partnership and company.

Section 4 defines the term 'partnership' as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The term 'partners' is defined as persons, who have entered into partnership with one another are called individually 'partners'. A 'firm' is the collective of the partners. The 'firm name' is the name under which the business is carried on. The following are the essential ingredients for the constitution of a partnership-

• There should be an agreement between the parties;
• The agreement must be to share the profits of the business; and
• The business must be carried on by all or any of them acting for all;
• The existence of an agency between the concerned persons inter-se.

The agreement need not be in writing. It may be oral. It may be express of implie

Question 27 Difference between a partnership and a company

The following are the differences between the partnership and a company:

Basis	Partnership	Company
Legal entity	It is no. It is not a separate legal entity.	It is a separate legal entity.
Liability	The liability of the partners is unlimited.	The liability of the members of the company is limited.
Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limited for maximum.
Transfer of shares	A partner cannot transfer his share without the consent of other members	Transfer of shares in a public limited company is not a restricted one.
Management	The firm can be run by all or any of the partners.	The Board of Directors is having responsibility to run the management
Relationship	The relationship with partners is of that of agency.	No such relationship in the company.
Profit distribution	Profit is distributed according to the agreement entered between partners; if no agreement equal distribution.	No requirement of profit distribution to members. It is at the discretion of the management to declare dividend that too only out of profits.
Remedy to creditors	The creditors of a firm can proceed against the partners jointly and severally.	The creditors can proceed only against the company and not against shareholders.

Suggested Question

Question28 What are the rights of outgoing partners?

Rights of outgoing partners:
Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

- use the firm name;.
- represent himself as carrying on the business of the firm; or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may 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 the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner of the representative of the deceased partner is entitled at the option-

- 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 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

LIMITED LIABILITY PARTNERSHIP ACT, 2008

LLP ACT, 2008

INTRODUCTION

As per LLP act, 2008, LLP means limited liability partnership registered under LLP act, 2008. Same set of patners who have taken their regis - tration as per the provision of LLP act, 2008, will be called LLP

WHO CAN BE PARTNER IN LLP?

Any person can become partner in LLP. It does not matter whether he is natural person or artificial person. It means even the company can be partner in LLP.

MINIMUM NO OF PARTNERS

LLP must have ~~two~~ Minimum **TWO Individual** partners It means every LLP must have two natural persons. Otherwise incorporation is not allowed. In simple words two companies cannot open LLP.

REDUCTION IN NUMBER OF PARTNERS

There must always be minimum two Individual partners Otherwise technical requirement will not be fulfilled. If no. of partners go below two, it must be increased back within 6month. Otherwise LLP will become illegal assosiciat - ion.

DESIGNATED PARTNER

Every LLP must have minimum two designated partners. These partners are responsible for performing all the compliance of LLP act, 2008. So they will be liable for all punishment & under the act. Designated partners must be decided and declared before incorporation. Atleast one of the designated partner must be Indian resident. If casual vacany arises in the office of designated partner, it will be filled within 30day by remaining partner

* Following person can never become designated partner.

1. Person who has applied for Insolvency.
2. Any person who has not made payments to his creditors or made any compromise with them, in last Five years.
3. Any person who has been in Jail for 6month or more.

RESERVATION OF NAME

It is mandatory to take name confirmation from registerer of ~~company~~ companies. So that it become confirm that name requested is available. Name, if approved will be reserved for three

months period. Application for name approval is given in **FORM NO. 1** there is no fee for this name application. ROC will replay in within 7 days.

APPLICATION FOR INCORPORATION

After getting the name approval, Incorporation application is submited in FORM-NO.2 this must be submitted within 3months of name approval otherwise we have to apply for the name again.

Following are compulsory contents of FORM-NO-2

1. Name of LLP
2. Proposed Business of LLP
3. Address of LLP
4. Name and address of all partners.
5. Name and address of designated partners.

STATEMENT BY PROFESSIONAL

Apart from FORM-NO.2, a declaration is given by advocated, CA, CMA or CS that every thing in relation to incorporation has been done as per rules. If this declaration is found false, minimum fine is ₹10,000., maximum fine is ₹500,000 and maximum jail is 2years.

INCORPORATION:

1. If everything is verified and found correct ROC will issue certificated of Incorporation.

2. COI is also called registeration certificate.

3. Registeration certificate contains LLP identification number ~~and~~ or LLIN

4. Certificate of Incorporation is a conclusive evidence that © LLP has been created and even if there are thousand errors in the Incorporation process, existence of LLP cannot be challenged. It means only the error will be rectified but LLP will remain LLP.

REGISTERED OFFICE → Refer company Law.

SERVICE OF DOCUMENT → Refer Company Law.

CHANGE OF REGISTERED OFFICE

Registered office can be shifted upon decision of 100% partners but following three conditions are compulsory:

(a) approval of secured creditors.
(b) newspaper notice is compulsory in atleast 2 newspapers.
(c) Intimation to ROC is compulsory within 30days of partners approval.

(d) Newspaper notice & approval of creditors is not required if state is not changing.

CHANGE OF NAME

1. If it is begined changed because of Central Govt. Order, it must be done with in **3 months**.

2. It can be ~~co~~ Changed Voluntary as well if **100%** partners agree.

3. In both the cases, LLP must apply for name availability in FORM NO. 1

4. When the name is changed ROC must be intimated within **30 days**.

CHANGES IN PARTICULARS OF PARTNERS

Whenever there are Changes in particulars of partners such as name, address or marital status etc, it must be intimated to ROC within **30 days**. This intimation will be signed by CA, cost accountant or CS.

LIABILITY OF PARTNERS.

1. liability of partners are limited.

2. liability of designated partners are also limited.

3. However, if designated partners are acting beyond their authority, they will be personally liable.

MAINTENANCE OF BOOKS OF ACCOUNT → Refer co. Law.

AUDIT:

1. Audit is not complusory in LLP
2. Audit becomes complusory only if capital contrib-uted by partners is [₹ 2500,000 or more. OR Turnover is ₹ 40,00,000 or more.]
3. Audit shall be done by Practicing CA.
4. Auditor is appointed every year.
5. Auditors are appointed by designated partners.
6. Auditor should be appointed atleast 30days in advance before the end of Financial year.
7. Auditor can be removed by concent of 100% partners and approval of any authority is not required.
8. In case of $ Casual vacancy in the office of

auditor it shall be filled by designated partners within 14days.

Annual Return

Annual return is a summary of every thing happend or done in the previous year and proposed initiatives in the upcoming financial year. Annual return is compulsory for all LLP But if the turnover is beyond ₹ 500,00,000 (5Cr) or capital contribution is beyond ₹ 50,00,000 (50Lakh), such annual return must be signed practicing C.S.

FOREIGN LLP

1. If an LLP is registered outside India but has a place of business and business activity within India, it shall be foreign LLP.

2. Foreign LLP must inform to ROC within 30days from the date of establishing place of business in India.

3. Foreign LLP will submit following document to ROC, which must be in English and if they are not in english they must be translated into english.

(a) Copy of certificate of Incorporation.
(b) Full details of Registered office.
(c) Country of Incorporation
(d) All addresses within India.
(e) Details of all partners.

Compromise and Arrangement

1. Compromise is an agreement made with creditors after filing a case by creditors against LLP.

2. Arrangement is an agreement made with creditors before any dispute so that no dispute arises at all.

3. Every compromise and arrangement must be approved by 75% partners and 75% creditors.

INVESTIGATION

1. Central govt can do Investigation either on its own or upon orders of a court.

2. Investigation application can be given by any no. of creditor or 1/5th partners.

3. All expenses of Investigation shall be paid by ~~Centera~~ Central govt. itself but will be recovered from the defaulting party.

AMALGAMATION OF LLP

1. Amalgamation can be in the nature of merger or acquisition.

   For ex = $LLP_A + LLP_B = LLP_A$ (Acquisition)

   $LLP_A + LLP_B = LLP_C$ (Merger)

2. Amalgamation can be done only if 100% partners agree and 75% creditors give their approval.

WINDING UP OF LLP

1. winding up can be voluntary or compulsory after the approval of order of court.

2. Voluntary winding up can be done after asking 75% of partners and creditor.

3. In voluntary winding up, designated partner will give return declaration that LLP is solvent and payment to creditors will be done in next 12 month.

4. compulsory winding up is done only if when their is court order.

5. Order will come only if it is practically impossible to continue LLP.

6. This order can be given if LLP is working against the interest of creditors, security of India or national interest.

7. Liquidator is appointed to do winding up.

8. Liquidator shall be CA, cost accountant, CS, Advocate and any other person as may be authorised.

	India any unclaimed or unpaid distributable sum payable to the creditc or undistributed or unpaid assets refundable to partners in his hands on the dalc of order of dissolution, and such other balance in his hands as he has been directed by the Tribunal to deposit into the LLPs Liquidation Account. A copy of the order of dissolution shall, within 30 days from the date of order, be forwarded to the liquidator in Form No. 11 who shall make in his books a minute of the dissolution of LLP. A copy of the same shall be filed with the Registrar along with a Statement signed by him that the directions of the Tribunal regarding the application of the balance as per his final account have been duly complied with.
Conclusion of winding	Rule 249 provides that the winding up of a LLP shall be deemed to be concluded, in the case of- • An LLP wound up by order of the Tribunal, at the date on which the order dissolving the LLP has been reported by the Liquidator to the Registrar; • An LLP wound up voluntarily, at the date of dissolution of the LLP, unless at such date any fund or assets of the LLP remain unclaimed or undistributed in the hands or under the control of LLP liquidator, or any person who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the LLP Liquidation Account.
	Rule 250 provides that an application shall be made upon notice to the Central nt and the Registrar. Where the Tribunal declares the dissolution to have the applicant shall file a certified copy of the order with the Registrar an 30 days from the date of order.
	provides that any aggrieved person may prefer an appeal against the cision of the Tribunal to the National Company Law Appellate Tribunal eriod of 45 days from the date on which the order is delivered in such may be provided by that Appellate Tribunal.

PRACTICE MANUAL

Fill in the blanks

1. Every LLP has at least ____partners.

2. Designated partners shall always be _____.

3. The particulars of designated partner shall be filed within ____ days of his appointment with the Registrar.

4. Every partner shall inform the LLP of any change in his name or address within a period of ____ days of such change in Form No._____.

5. Every partner of LLP is the _____ of LLP.

6. The books of accounts of a LLP are required to preserve for _____ from the date on which they are made.

7. The LLP shall inform the concerned Registrar within _____ of the date of registration about the conversion and the particulars of LLP.

8. The foreign LLP shall file any alteration with the Registrar within _____ days of the close of the financial year.

9. The Central Government may appoint Inspector to investigate the affairs of the LLP if not less than _____ the total number of partners of LLP make an application.

10. Where an LLP is not carrying on any business for a period of ____ or more, the name of the LLP may be struck off by the Registrar.

Choose the correct answer:

Choose the correct answer

1. An LLP is a-

(a) Partnership;

(b) Company;

(c) Hybrid between a company and a partnership;

(d) None of the above.

2. The procedure for conversion from the firm into LLP is dealt with in the-

(a) First Schedule;

(b) Second Schedule;

(c) Third Schedule;

(d) Fourth Schedule.

3. Which one of the following is not an LLP?

(a) Corporate Sole;

(b) LLP registered under LLP Act;

(c) LLP incorporated outside India;

(d) Company registered outside India.

4. The minimum number of designated partners in an LLP shall-

(a) 1;

(b) 2;

(c) 7;

(d) 15.

5. The fee payable for registration of LLP whose contribution exceeds `10 lakhs is-

(a) `500/-;

(b) `2000/-;

(c) `4000/-;

(d) `5000/-

6. A partner may contribute to the LLP-

(a) Tangible or intangible property;

(b) Moveable or immoveable property;

(c) Money, promissory note etc.,

(d) Any of the above.

7. The accounts of LLP shall be audited if the turnover of LLP exceeds-

(a) ` 10 lakhs;

(b) `20 lakhs;

(c) `40 lakhs;

(d) ` 1 crore.

8. Which one of the following documents is required to keep for more than 5 years?

(a) Copies of Government order relating to LLP;

(b) All papers, registers, refund orders and correspondence relating to the LLP liquidation accounts;

(c) Copies of statistical returns furnished to Government;

(d) Annual return of a LLP.

9. The Act does not allow the conversion from _____ into LLP-

(a) Conversion from firm into LLP;

(b) Conversion from private company to LLP;

(c) Conversion from listed company into LLP;

(d) Conversion from unlisted company into LLP.

10. A compromise or arrangement may be proposed-

(a) Between a LLP and its partners;

(b) Between a LLP and its creditors;

(c) Either (a) or (b);

(d) None of the above

State whether TRUE or FALSE

1. The liability of a partner in an LLP is limited.

2. LLP is a separate legal entity.

3. An LLP is incorporated outside India is also included in the definition of LLP.

4. If the minimum number of partners is reduced below LLP may not carry its business.

5. The liabilities of LLP shall be met out of the properties of designated partners.

6. No partner shall be entitled to remuneration for acting in the business of LLP.

7. The Central Government may compound any offence under this Act which is punishable with fine only.

8. A company may apply to convert itself into a LLP if and only if the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

9. LLP Administrator shall be appointed from a panel maintained by the State Government for winding up and dissolution of LLP.

10. The liability of every designated partner of the dissolved LLP shall continue and may be enforced as if the LLP had not been dissolved.

Model Questions

1. Discuss the salient features of LLP.

2. Who may be a partner in LLP?

3. Define ‘designated partner’. Discuss the procedure of the appointment of a ‘designated partner’.

4. Write notes on Designated Partners Identification Number.

5. What are to be included in ‘incorporation document’.

6. Discuss the procedure in changing registered office of the LLP.

7. Describe the circumstances under which an LLP would be wound up.

8. Discuss the matters contained in the first schedule in regard to the terms of the agreement for an LLP.

9. Write a note on cessation of partnership interest. Discuss about the liability and entitlement of a ceased partner.

10. Write short notes on-

(a) Statement of Accounts & Solvency;

(b) Annual Return;

(c) Compounding of offences.

11. Discuss about the procedure relating to preservation of LLP records.

12. Discuss the procedure for conversion from a firm into an LLP.

13. Discuss the procedure for conversion from a private company into an LLP.

14. Discuss the procedure for conversion from an unlisted company into an LLP.

15. Elaborate the procedure for convening a meeting of creditors/partners in regard to compromise or arrangement.

Answers:

Fill in the blanks

1. 2;

2. Individual; 3. 30;

4. 15, Form 6;

5. Agent;

6. 8 years;

7. 15 days;

8. 60 days;

9. One fifth;

10. 2 years.

Choose the correct answer

1. C;

2. B;

3. A;

4. B;

5. D;

6. D;

7. C;

8. B;

9. C;

10. C.

State whether TRUE or FALSE

1. FALSE;

2. TRUE;

3. TRUE;

4. FALSE;

5. TRUE;

6. FALSE;

7. TRUE;

8. TRUE;

9. FALSE;

10. TRUE.

MTP Question:

MTP June 2019
Question: 1 Discuss the procedure for Conversion from private limited company into LLP

Answer: Conversion from private limited company into LLP
Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule.

A company may apply to convert itself into a LLP if and only if-
• there is no security interest in its assets subsisting or in force at the time of application; and
• the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.
Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

The company has to apply with the Registrar by filing the following documents:

• A statement by all its shareholders in Form No. 18 and fees containing the following particulars-
●The name and registration number of the company;
●The date on which the company was incorporated; and
• Incorporation document and statement;
On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate. The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees. If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal.

MTP Jun 2018
Question: 2 Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer: Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:
1. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
2. A limited liability partnership shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
5. Any individual or body corporate may be a partner in a limited liability partnership.

MTP Jun 2017
Question: 3 Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer: Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:
1. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
2. A limited liability partnership shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
5. Any individual or body corporate may be a partner in a limited liability partnership**.**

MTP Dec 2017
Question: 4 Explain in details the term 'designated partners' under LLP Act, 2008.

Answer: Designated Partners
"Designated partner" in reference to Limited Liability Partnership means any partner designated as such pursuant to section 7 of Limited Liability Partnership Act 2008. Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated as such, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.

Provided that in case of a limited liability partnership in which 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 limited liability partnership or nominees of such bodies corporate shall act as designated partners.

An individual cannot become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed and he is also required to obtain a Designated Partner Identification Number (DPIN).

The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company. The Designated Partners as provided under Section 8 are directly responsible for the compliances of all provisions provided under LLP Act, 2008 and the provisions specified in the LLP Agreement.

Rights of Designated Partner are same as of other Partners. Alike other partners they are not entitled to any remuneration for their participation in management of LLP unless otherwise specifically provided in the LLP Agreement they ,yet they have additional responsibilities to comply with.

A designated partner shall be

(i) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(ii) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Major duties of Designated Partner

(i) Notify any changes in the LLP's to Registrar of Companies.

(ii) Notify any changes in the Partners names & residential addresses to Registrar of Companies.

(**iii)** Notify any change in Registered Office Address to Registrar of Companies.

(iv) Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.

(v) Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.

(vi) to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power

(**vii)** Responsible for signing all the eforms filed with the Registrar of Companies.

Any vacancy arising in the office of Designated Partner shall be filled within 30 days and the change shall be intimated to the Registrar of Companies

Suggested Question:

Suggested Dec2018

Question: 5 A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Alternate Answer:

Change of LLP Office from one State to another (in the given problem, it is from Mumbai, Maharashtra to Kolkata, West Bengal)

Resolution for Change of Address: It should be done as per LLP Agreement. If where the Limited LLP doesn't provide for any such procedure, consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place.

Secured Creditors: Consent of Secured Creditors required for such change of address.

Form to be filed: Form- 15 to be filed with Registrar from where (here it is Mumbai) the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction (Kolkata) the registered office is proposed to be shifted within 30 days of such change.

Public Notice: Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated **(Mumbai, Maharashtra)** and circulated in that district giving notice of change of registered office.

From when to be filed: Within 30 days of publishing of notice.

Failure to comply with these provisions, the LLP and its every partner is liable to punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Revisionary Question:

Revisionary Dec 2018
Question: 6 Write a note on designated partners.

Answer: Section 7(1) provides that every LLP shall have at least two designated partners. The designated partners shall be individual and at least one of them shall be a resident of India, who has stayed in India for a period not less 182 days during the preceding one year. In case all the partners of the LLP are bodies corporate or one or more partners are individuals and bodies corporate then at least two individual partners or nominees of bodies corporate shall act as designated partners.
• If the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation;
• If the incorporation document states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner;

• Any partner may become or cease to be a designated partner in accordance with LLP agreement;

Filing requirement: Section 7(4) provides that –
• An individual shall give his consent to become a designated partner in Form – 9;
• The particulars of an individual who has given his consent to act as designated partner shall be filed in Form No.-4;
• The individual who has given consent to act as partner or a designated partner shall file consent in Form -2 along with fee.

Disqualification to become designated partner: Rule 9 prescribes that a person shall not be capable of being appointed as a designated partner of a LLP, if he-

• has at any time within the preceding five years been adjudged insolvent; or
• suspends, or has at any time within the preceding five years suspended payment to his creditors and has not any time within the preceding five years made, a composition with them; or
• has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
• has been convicted by a Court for an offence involving section 30 of the Act.

Liabilities of designated partners: Section 8 provides the liabilities of designated partners. It provides that unless expressly provided otherwise in this Act, a designated partner shall be –

• responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement, report under this Act and as specified in the agreement;

• liable to all penalties imposed on the LLP for any contravention of those provisions.

Vacancy: Section 9 provides that a LLP may appoint a designated partner within 30 days of the vacancy arising for any reason. If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner. Punishment: Section 10(1) provides the LLP contravenes the provisions of Sections 7(1) the LLP and its every partner shall be punishable with fine which shall not be less than ` 10,000/- but which may extend to ` 5 lakhs. Section 10(2) provides that if the LLP contravenes the provisions of Section 7(4) and (5), Section 8 or Section 9 the LLP and every partner shall be punishable with fine which shall not be less than ` 10000/- but which may extend to ` 1 lakh.

Question: 7 A limited liability Partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Revisionary June 2018
Question: 8 State the duties of a LLP Liquidator. Would his accounts be audited?

Answer: Rule 13 provides that on appointment of a LLP liquidator, all the powers of the designated partner and other partner, if any, shall cease, except for the purpose of giving notice of such appointment of the LLP liquidator to the Registrar. Rule 14 prescribes the following duties –

- He shall settle the list of creditors or partners, which shall prima facie evidence of the liability of the persons therein to the creditors or partner;
- He shall obtain approval of partners or creditors for any purpose he may consider necessary;
- He shall maintain register and proper books of accounts in the form and manner as specified;
- He shall the debts of the LLP and shall adjust the rights of the partners among themselves;
- He shall observe due care and diligence in the discharge of duties.

Audit of LLP liquidator's account - Rule 15 provides that the accounts of the LLP liquidator shall be audited.

Supervision of winding up - Rule 16 provides that the partners or the creditors may appoint such committees as they consider appropriate to supervise the voluntary winding up and assist the LLP liquidator in discharging the functions.

The LLP liquidator shall report quarterly on the progress of the winding up of the LLP in Form No. 8 to the partners or creditors which shall be made before the end of the following quarter. Where the fraud is reported against any person other than a partner or designated partner, the LLP liquidator, before sending a report to the Tribunal, may intimate it to the partners or designated partners and include their views in the report.

The Tribunal is having power to make any order to transfer the winding up proceedings from voluntary winding up to compulsory winding up by Tribunal.

Revisionary June 2018
Question: 9 A limited liability partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

Answer: Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors**.**

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Workbook Question:

Question: 10 Write the Difference between partnership and limited liability partnership.

Answer:

Basis	Partnership	Limited Liability Partnership
1.Legal entity	It is not a separate legal entity	It is a separate legal entity
2.Liability	The liability of the partners is unlimited.	The liability of the members of the LLP is limited.
3.Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers.
4.Entering into contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
5.Compliance of law	Lesser compliance	More compliance under LLP Act.
6.Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise e than agreed to in the agreement.	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

Question: 11 State the provision of Appointment, Removal and Resignation of auditor as per LLP Act 2008

Answer: Appointment of auditor A Chartered Accountant in practice is qualified for appointment as an auditor. The auditor(s) shall be appointed for each financial year of the LLP for auditing its accounts. The designated partners may appoint an auditor(s)-

 at any time for the first financial year but before the end of the first financial year;

 at least 30 days prior to the end of each financial year (other than the first financial year); (to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of LLP exceeds the limits; or

 to fill up the vacancy caused by removal of an auditor.

If the designated partners have failed to appoint auditor(s), the partners may appoint an auditor or auditors. An auditor appointed shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

 the new auditors are appointed; or

 they are re-appointed. Rule 24 (14) provides that where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed unless-

 the LLP agreement requires actual reappointment; or

 the majority of partners have determined that he should be reappointed and have given a notice to this effect to the LLP.

A notice may be in hard copy or electronic form and must be authenticated by the person or persons giving it. The above shall be applicable to removal and resignation of auditors. The remuneration of an auditor may be fixed by the designated partners or in accordance with the procedure laid down in the LLP agreement.

Removal of auditor
Rule 24(18) provides that the partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement. If the agreement does not provide for the removal of an auditor, consent of all partners shall be required for removal of the auditor from his office.

Resignation of auditor
Rule 24(19) provides that an auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office. If an auditor is not willing to be re-appointed he shall give a notice in writing to the LLP not less than 14 days before the end of the time allowed for appointing the new auditor. The notice is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office. The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as it may be specified in the notice.

Question: 12 Explain the procedure of Cessation of partnership interest as per LLP Act, 2008.

Answer: Section 24 explains the procedure of Cessation of partnership interest.—
(1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.

(2) A person shall cease to be a partner of a limited liability partnership— (a) on his death or dissolution of the limited liability partnership; or (b) if he is declared to be of unsound mind by a competent court; or (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

(3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless— (a) the person has

notice that the former partner has ceased to be a partner of the limited liability partnership; or (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

(4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—

(a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

(6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership

Question: 13 State the Relationship of partners as per LLP Act, 2008.

Answer*:* Section 23 of the LLP Act elucidates the Relationship of partners, as specified below—

(1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Scanner Question:

Question:14 2012 - June
Limited Liability Partnership; **(4 marks)**

Answer:
Limited Liability Partnership is formed under Limited Liability Partnership Act, 2008. Its essential features are :

(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and liability of partners is limited.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

(4) The provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

(5) Any individual or body corporate may be partner of LLP.

(6) Every limited liability partnership shall have at least two partners.

(7) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
(8) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(9) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

Question:15 2013- June
Annual Return (limited liability partnership) **(4 marks)**

Answer:
• Annual return: (Section 35): As per Section 35 of the LLP Act, every LLP shall file an annual return within sixty days of its financial year in such form and manner as may be prescribed.

• Such return should be accompanied by prescribed fees.

• If the LLP fails to comply with the provisions of Section 35 regarding filing of annual return, the LLP will be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees and every designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Question:16 2009- June [1]
A limited liability Partnership is a body corporate. **(2 marks)**

Answer:
A limited liability partnership is a body corporate with legal personality separate from that of its members. It is formed as per the Limited Liability Partnership Act 2009.

Question:17 2009- Dec [4]
How the profit of a limited liability partnership are treated for the purpose of Tax Acts? **(2 marks)**

Answer:
Profit will be treated as profits of the partners or members of LLP and not by the LLP as such.

Question:18 2010- June
A limited liability partnership must ensure that
(i) Where a person becomes or ceases to be a member or designated member, notice is delivered to the Registrar within 30 days.

(ii) Where there is any change in the name or address of a member, notice is delivered to the Registrar within 30 days. **(1 + 1=2 marks)**

Answer:
In first case, the notice to the Registrar be delivered within 14 days and in (ii) within 28 days.

Question:19 2011- Dec

All the members of a limited partnership firm are "designated members". **(2 marks)**

Answer:
Designated Partners
According to Section 7 of Limited Liability Partnership Act,2008,

1. Every limited liability partnership shall have at least two designated
partners who are individuals and at least one of them shall be a resident in India✓
Provided that in case of a limited liability partnership in which 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 limited liability partnership or nominees of such bodies corporate shall act as designated partners.

2. Subject to the provisions of sub-Section (1), --
(i) if the incorporation document-

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may ' cease to be a designated partner in accordance with limited liability partnership agreement.

3. An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to &ct as such to the limited liability partnership in such form and manner as may be prescribed.

Question: 20 2012- Dec

Provisions of Indian Partnership Act 1932 are applicable to LLPs and the body Corporate may be partner of LLP. **(2 marks)**

Answer :
The rules and regulations relating to Limited Liability Partnership have been described in the Limited Liability Partnership Act 2008, hence provisions of Indian Partnership Act 1932 are not at all applicable to LLP's. As regard the second portion of the question, the body corporate may be a partner in the LLP as per LLP Act 2008.

Question: 21 2013- Dec [3]

(i) Authorized capital for formation of limited liability partnership (LLP) is one crore.

(ii) Maximum number of partners in a LLP shall not exceed 50.

(iii) Foreign nationals can also be partners in a LLP.

(iv) Audit is not required in LLP in any circumstances. **(1x4 = 4 marks)**

Answer:
(i) NIL-Since the authorised capital is not specified in the Act.

(ii) No maximum limit-as no specific number specified in the Act.

(iii) Yes, foreign Nationals can also be partners.

(iv) Audit is required if the contribution is above INR 25 Lakhs or if annual turnover is above INR 40 Lakhs.

Question: 22 2013- Dec [6]
What are the circumstances in which Limited Liability Partnership may be wound up by Tribunal?
(3 marks)

Answer:
The circumstances in which a limited liability of partnership may be dissolved by Tribunal are provided in Section 64 of the Limited Liability Partnership Act, 2008 A limited liability partnership may be wound up by the Tribunal in following ways:

(i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
(ii) if, for a period of more than six month, the number of partners of the limited liability partnership is reduced below two;

(iii) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(iv) if the limited liability partnership has made a default in filling with the Registrar the statement of account and solvency or annual return for ary five consecutive financial years; or

(v) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(vi) If the limited liability partnership is unable to pay its debts.

Question: 23 2014- June
Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act, 2008.
(3 marks)

Answer:
Whistle blowing policy means a policy in which a mechanism is established to listen and take action against any wrong practice anywhere in the company. The concept has been discussed in Section 31 of the Limited Liability Partnership Act, 2008. As per the Section:

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that:

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other 'manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-Section(l).

Question: 24 2014- June
A Limited Liability Partnership is not bound by any act of its member. Justify. **(2 marks)**

Answer:
If the member has no authority to act on behalf of LLP, the LLP is not bound by his act. A limited liability partnership is not bound by any act of a member in dealing with persons if:

(a) The member in fact has no authority to act for the limited liability partnership by doing that thing.
(b) The person knows that the members has no authority or does not know or believe him to be a member of limited partnership.

Question: 25 2014- Dec
A limited liability partnership wants to shift its registered office from Udaiipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow? (4 **marks)**

Answer:
• Sec. 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.

• Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

• Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office.

• However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.

• Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Question: 26 2015 - June
Explain the extent of liability of limited liability partnership under Section 26 of LLP Act. (3 **marks)**

Answer:
Extent of liability of limited liability partnership is contained in Section
27 which are as under:

1. A limited liability partnership is not bound by anything done by a partner in a deaiing with a person if:

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

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

3. An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

4. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Question: 27 2015- Dec
For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable for all penalties. Offer your views based on Limited Liability Partnership Act, 2008. (3 **marks)**

Answer:
False, it is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement, Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Question: 28 2016 - June [2]
Limited Liability Partnerships are body corporate. Do you agree? Justify. **(5 marks)**

Answer :
Limited liability partnership to be body corporate:
1. A limited liability partnership is a body corporate formed and incorporated under this Act.and is legal entity separate from that of its partners.

2. A limited liability partnership shall have perpetual succession.

3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Question: 29 2016 - Dec [2]
List the circumstances under which a LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal. **(6 marks)**

Answer:
A limited liability partnership may be wound up by the Tribunal, if:

(i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
(ii) If, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(iii) If the limited liability partnership is unable to pay its debts;

(iv) If the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(v) If the limited liability partnership has mode a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

(vi) If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Question: 30 2018- Dec

A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008? (8 marks)

Answer:

• According to Sec. 13 of the LLP Act Provides that a limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.

• Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be need for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

• Where the change in place of registered office is from one State to another State, a general notice, not less than 21 days before filing any notice with Registrar, is need to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership's situated and circulating in that district giving notice of change of registered office.

• Although, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.

• Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Alternate

Answer:

Change of LLP Office from one State to another (in the given problem,

it is from Mumbai, Maharashtra to Kolkata, West Bengal)

1. **Resolution for Change of Address:** It should be done as per LLP Agreement. If where the Limited LLP doesn't provide for any such procedure, consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place.

2. Secured Creditors: Consent of Secured Creditors required for such change of address.

3. Form to be filed: Form-15 to be filed with Registrar from where (here it is Mumbai) the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar ihder whose jurisdiction (Kolkata) the registered office is proposed to be shifted within 30 days of such change.

4. Public Notice: Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and another regional language where the registered office of the LLP is situated (Mumbai, Maharashtra) and circulated in that district giving notice of change of registered office.

5. From when to be filed: Within 30 days of publishing of notice.
6. Penalty: Failure to comply with these provisions, the LLP and its every partner is liable to punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.