

OVERVIEW OF THE DOCUMENT

LAST 5 ATTEMPT [SEPT 24, JAN 25, MAY 25, SEPT 25, JAN 26, MAY 26]					
CHAPTER	RTP	PYQP	MTP	Total	 IMP
IRF	4	1	7	12	3
Contract	37	20	27	84	31
SOGA	24	18	17	59	20
IPA	18	13	15	46	19
LLP	5	5	-	10	3
TCA	16	10	20	46	10
NIA	8	8	10	26	6
Total	112	75	96	283	92

Some Significant points –

1. All chapters are divided into three parts – RTP, PYQ and MTP
2. There are about **TOTAL 283 QUESTIONS**
3. Only **UNIQUE QUESTIONS** are kept in the PDF to avoid repetition.
4. It comprises of DQ and Case Study based Questions – BOTH
5. I have selected **TOP 92 QUESTIONS** from all the 5 attempts
6. Questions will be discussed and few will be practiced written.

WATCH THE FULL VIDEO FOR EXPLANATION

<https://www.youtube.com/watch?v=V0LtjioGjs8&t=5226s>



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Indian Regulatory Framework

RTP (Indian Regulatory Framework)

1. **Describe the major functions of the Reserve Bank of India (RBI) in regulating the Indian economy. How does it manage currency, payment systems and economic development?**

(RTP May 2026)

Ans. Reserve Bank of India:

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

2. **What is the Insolvency and Bankruptcy Board of India (IBBI)? Discuss its establishment, powers, functions and the categories of persons and entities covered under the Insolvency and Bankruptcy Code, 2016.**

(RTP Jan 2026)

Ans. Insolvency and Bankruptcy Board of India (IBBI): IBBI is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.

It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.

It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.

It attempts to simplify the process of insolvency and bankruptcy proceedings.

It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt recovery tribunal.

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

(RTP SEP 2025)

Ans. Hierarchical Structure of the Indian Judicial System

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

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

(i) Supreme Court

The Supreme Court is the apex body of the judiciary, established on 26th January, 1950. The Chief Justice of India is the highest authority appointed under Article 126 of the Constitution of India.

The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32 of the Constitution of India.

(ii) High Court

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

(iii) District Court

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

On the basis of a pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore. On the basis of territorial Jurisdiction i.e. courts have power to control the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

(iv) Metropolitan courts

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

4. What is the significance of the Supreme Court and High Court in the Indian judiciary?**(RTP Jan 2025)****Ans. (i) Supreme Court**

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

(ii) High Court

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

PYQ (Indian Regulatory Framework)**5. Ashok and Vimal are pursuing chartered accountancy course and discussing about the structure of the Indian judicial system. Explain them the functions of judiciary system of India and the hierarchy of courts and briefly explain their functioning under the Indian Regulatory Framework.****(6 Marks, PYQ Jan 2025)**

Ans. The functions of judiciary system of India are:

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

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

- (i) Supreme Court:** The Supreme Court is the apex body of the judiciary. It was established on 26th January, 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India

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

Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore. Jurisdiction means the power to control. Courts get territorial

Jurisdiction based on the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

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

MTP (Indian Regulatory Framework)

6. Explain in brief the important functions played by the Ministry of Finance, the Ministry of Corporate Affairs and the Ministry of Law and Justice in enforcing the law in India.

(6 Marks, MTP Jan 2025 S-2)

Ans. The Ministry of Finance

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

The Ministry of Corporate Affairs

- The Ministry of Corporate Affairs is an Indian Government Ministry.
- It is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

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

The Ministry of Law and Justice

- The Ministry of Law and Justice in the Government of India is a Cabinet Ministry
- It deals with the
 - ☐ management of the legal affairs, through the Department of Legal Affairs
 - ☐ legislative activities through the Legislative Department
 - ☐ administration of justice in India through the Department of Justice
- The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

7. **"Explain the process by which a Bill becomes an Act of Parliament in India. After a law is enacted, how is it enforced, and which authorities are responsible for its implementation?"**
(6 Marks, MTP SEP 2025 S-1)



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

Enforcing the Law: After a law is passed in parliament it has to be enforced. Somebody should monitor whether the law is being followed. This is the job of the executive. Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority. For this purpose government functions are distributed to various ministries. Some of the popular Ministries are the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and so on. These Ministries are headed by a minister and run by officers of the Indian administrative and other services.

The Government of India exercises its executive authority through a number of Government Ministries or Departments of State. A Ministry is composed of employed officials, known as civil servants, and is politically accountable through a minister. Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.

8. **What is the significance of the Supreme Court and High Court in the Indian judiciary?**
(6 Marks, MTP SEP 2025 S-2)

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

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

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

(6 Marks, MTP May 2025 S-1)

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

Enforcement of Law:

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

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

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

(6 Marks, MTP May 2025 S-2)

Ans. (i) Reserve Bank of India-

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

presses located in Nashik (Western India) and Dewas (Central India).

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

(ii) Ministry of Corporate Affairs (MCA)

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

11. Describe in brief about the following Regulatory bodies of the Government of India:

(i) Securities and Exchange Board of India

(ii) Reserve Bank of India

(iii) Insolvency and Bankruptcy Board of India

(6 Marks, MTP Jan 2025 S-2)

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

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

(ii) Reserve Bank of India (RBI):

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

- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

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

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

12. What do you understand by Law? Also, elaborate the procedure for making a law.

(6 Marks, MTP SEP 2024 S-1)

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

The Process of Making a Law

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

The Indian Contract Act, 1872

RTP (The Indian Contract Act, 1872)

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1. **Mr. Naman is an auctioneer. He advertised in a leading newspaper that an auction would be held on 17th April, 2025, in Agra for the sale of some office furniture. Mr. Kanha read the advertisement and travelled about 500 kilometres to attend the auction. When he reached the place of the auction, he found that the furniture had been withdrawn from the sale. Mr. Kanha sued Mr. Naman for the loss of his time and expenses.**

State, with reasons, whether Mr. Kanha can claim compensation from Mr. Naman under the provisions of the Indian Contract Act, 1872.

(RTP May 2026)

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

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

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

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

(RTP May 2026)

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

Section 25(2) specifically provides that a promise made in writing and signed by the promisor to compensate a person who has voluntarily done something for the promisor is enforceable, even

without fresh consideration. Thus, although the original act was voluntary, once a subsequent written promise is made, it becomes binding.

In the present case, Ramesh voluntarily returned Abhimanyu's lost documents. At that time, no enforceable contract existed because the act was not done at Abhimanyu's request. Subsequently, Abhimanyu made a written promise to pay ₹50,000 to Ramesh as a token of appreciation. Later, Abhimanyu refused to fulfil his promise. Here, the promise made by Abhimanyu in writing to compensate Ramesh for past voluntary services is valid and enforceable. Therefore, Ramesh is entitled to receive ₹50,000 and Abhimanyu is legally bound to pay.

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

(RTP May 2026)

Ans. Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is (a) forbidden by law, (b) defeats the provisions of any law, (c) fraudulent, (d) involves injury to person or property, (e) immoral, or (f) opposed to public policy. Any agreement with such an object is void. Smuggling of gold is expressly prohibited by Customs Law in India and is a criminal offence. Therefore, any contract to undertake smuggling is not only unlawful but also opposed to public policy, since Courts will not enforce agreements that encourage illegal trade.

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

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

Hence, the agreement between Mr. Vikas and Reddy is void under Sections 23 and 24 of the Indian Contract Act, 1872. The object of the contract (smuggling) is forbidden by law and opposed to public policy, and the lawful portion (investment in textiles) cannot be separated from the unlawful part. Therefore, Reddy cannot enforce either the smuggling profits or the investment clause. In

law, no rights or obligations can arise out of an unlawful agreement.



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

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

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

(RTP May 2026)

Ans. According to section 62 of the Indian Contract Act 1872, if the parties to a contract agree to substitute a new contract in place of the old one, or to rescind or alter it, the original contract need not be performed. Section 56 provides that an agreement to do an act which is impossible in itself is void. Further, if a contract was possible when it was made, but becomes impossible or unlawful after formation due to some event beyond the control of parties, it becomes void. However, mere commercial hardship or rise in cost is not impossibility. Impossibility applies only when the performance has become absolutely impracticable or unlawful.

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

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

As regards the substituted contract for construction of the hotel, a subsequent change in Law by the government prohibited hotel construction in that area. This made performance of the hotel

contract unlawful and impossible. Under Section 56, the contract therefore became void due to supervening impossibility.

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



5. **Mr. Ramesh delivered his gold ornaments to a jeweller, Mr. Arun, for polishing. Arun kept the ornaments in the locker of his shop and locked the premises before leaving. Unfortunately, during the night, some thieves broke into the shop and stole the ornaments. When Ramesh asked for the return of his ornaments, Arun expressed his inability and stated that he had taken as much care of the goods as he would have taken of his own property. Ramesh, however, claimed compensation for the loss on the ground that the ornaments were delivered under a contract of bailment and that the bailee was bound to return them. Decide, under the provisions of the Indian Contract Act, 1872, whether Arun is liable to compensate Ramesh.**

(RTP May 2026)

Ans. According to Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods from one person to another for a specific purpose, upon a contract that the goods shall be returned once the purpose is completed.

Section 151 provides that the bailee is bound to take as much care of the goods bailed as a man of ordinary prudence would take of his own goods.

Further, Section 152 states that if the bailee has taken such reasonable care, he is not responsible for loss, destruction or deterioration of the goods.

In the instant case, Ramesh entrusted his ornaments to Arun, a jeweller, for polishing. Arun locked them securely in his shop's locker. However, a theft occurred at night, and the ornaments were stolen despite the precautions taken. Ramesh demanded compensation, but Arun refused, claiming that he had exercised ordinary care.

Hence, it is clear that Arun has taken reasonable precautions by locking the ornaments in the locker and securing the shop. The theft was beyond his control and does not amount to negligence. Therefore, Arun cannot be held liable to compensate Ramesh for the stolen ornaments.



6. **Discuss in detail the rules governing the enforcement of contingent contracts under the Indian Contract Act, 1872.**

(RTP May 2026)

Ans. Rules relating to Enforcement

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Indian Contract Act, 1872.

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

impossible, such contracts become void”.

- (b) **Enforcement of contracts contingent on an event not happening:** Section 33 says that “Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before”.
- (c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the ‘event’ or ‘conduct’ as impossible of happening:** Section 34 says that “if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies”.
- (d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- (e) **Contingent on specified event not happening within fixed time:** Section 35 also says that - “Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen”.
- (f) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

7. **“An agency may be terminated by act of parties or by operation of law.” Explain this statement and discuss the circumstances under which an agency stands terminated.**

(RTP May 2026)

Ans. Termination of agency [Section 201 of the Indian Contract Act, 1872]: Termination of agency means putting an end to the legal relationship between principal and agent. Section 201 provides for the following modes of termination:

- (a) **Revocation:** An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204] Compensation for revocation by principal [Section 205]: If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation.
Notice of revocation [Section 206]: When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he

can be liable to pay compensation for any damage caused to the agent (Section 206).

Revocation and renunciation may be expressed or implied [Section 207]: Revocation of agency may be expressed or implied in the conduct of the principal.

- (b) **Renunciation by agent [Section 206]:** An agent may renounce the business of agency in the same manner in which the principal has the right of revocation. In the first place, if the agency is for a fixed period, the agent would have to compensate the principal for any premature renunciation without sufficient cause. [Section 205] Secondly, a reasonable notice of renunciation is necessary. Length of notice (time period of notice) is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal. [Section 206]
- (c) **Completion of business:** An agency is automatically and by operation of law terminated when its business is completed. Thus, for example, the authority of an agent appointed to sell goods ceases to be exercisable when the sale is completed.
- (d) **Death or insanity:** An agency is determined automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding.
- (e) **Principal's insolvency:** An agency ends on the principal being adjudicated insolvent.
- (f) **On expiry of time:** Where an agent has been appointed for a fixed term, the expiration of the term puts an end to the agency, whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term.

8. Discuss the essential conditions that must be fulfilled for a valid contract of guarantee under the Indian Contract Act, 1872.

(RTP May 2026)

Ans. Essential features of a Guarantee

The following are the requisites of a valid guarantee:-

1. **Purpose:** The purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.
2. **Consideration:** Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.
As per Section 127 consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee, but past consideration is no consideration for the contract of guarantee.
Even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.
3. **Existence of a liability:** There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. The liability must be legally enforceable and not time barred.

4. **No misrepresentation or concealment (section 142 and 143):** Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142) Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143).
5. **Writing not necessary:** Section 126 expressly declares that a guarantee may be either oral or written.
6. **Joining of the other co-sureties (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. That implies, the guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

9. **Mr. Sharma, a trader, wrote to Mr. Verma offering to sell him 100 barrels of “oil” at ₹ 5,000 per barrel. The letter reached Verma on 1st June. On 2nd June, Sharma posted another letter revoking the offer. However, before receiving the revocation, Verma posted a letter of acceptance on 3rd June. Sharma’s letter of revocation reached Verma on 4th June. When Verma later demanded delivery, Sharma refused, stating that the contract was void since he had not specified which kind of oil was being offered (mustard, groundnut, or refined), and further claimed that he had no oil stock at all. Verma sued for breach of contract, insisting that valid acceptance had already been communicated. Sharma defended himself by stating that the contract was void for uncertainty and impossibility.**

Examine the relevant provisions of the Indian Contract Act, 1872, and decide whether a binding contract was created between Sharma and Verma and whether Sharma is liable for damages.

(RTP Jan 2026)

Ans. Section 4 of the Indian Contract Act, 1872 lays down the rules of communication of acceptance and revocation:

- The communication of acceptance is complete, as against the proposer, when it is put in the course of transmission to him, so as to be out of the power of the acceptor.
- The communication of revocation is complete, as against the person who makes it, when it is put into transmission; and, as against the person to whom it is made, when it comes to his knowledge.
- Therefore, revocation is valid only if it reaches the offeree before he posts his acceptance.

Further, Section 10 provides the essentials of a valid contract. Among them, the agreement must be certain and capable of being performed. If the meaning of the agreement is uncertain, or if it is incapable of performance, it cannot be enforced. Section 56 declares that agreements to do an impossible act are void. If a contract becomes impossible to perform after it is made, it becomes void when the act becomes impossible.

In the instant case, Mr. Sharma offered to sell “oil” to Mr. Verma and later posted a revocation. Before receiving the revocation, Verma posted his acceptance. Sharma then refused delivery, claiming the contract was void due to the unspecified “oil” and his lack of stock.

On the basis of the provisions of law and the facts of the case, it can be concluded that although acceptance was validly communicated before revocation, the agreement was void because (a) it was uncertain (the type of oil was not specified), and (b) performance was impossible (Sharma had no oil stock). Hence, no enforceable contract exists and Verma cannot claim damages.



- 10. Mr. Das, a landowner, transferred his property to his daughter, Geeta, on the condition that she would pay ₹ 20,000 annually to her maternal uncle, Mr. Gopal. Geeta accepted the property but later failed to pay the annuity. Mr. Gopal sued Geeta for recovery. Geeta argued that since Gopal was not a party to the agreement, he had no right to sue. Gopal contended that the consideration had moved from Das on his behalf and that he was entitled to enforce the promise.**

Examine whether Mr. Gopal can recover the annuity under the Indian Contract Act, 1872.

(RTP Jan 2026)

- Ans.** Under Section 2(d) of the Indian Contract Act, 1872, consideration may move from the promisee or any other person. However, under the doctrine of privity of contract, only parties to a contract can sue upon it. An exception was recognized in Chinnayya vs. Ramayya, where an agreement made between two parties for the benefit of a third party was held enforceable, even though the third party was not directly a part of the agreement.

In the present case, Mr. Das transferred his property to his daughter, Geeta, on the condition that she would pay ₹20,000 annually to her maternal uncle, Mr. Gopal. Geeta accepted the property but failed to fulfil her obligation. Although Gopal was not a party to the original contract, the promise was clearly intended for his benefit, and consideration had moved from Das to Geeta on his behalf. Although the general rule is that a stranger to a contract cannot sue, Gopal falls within the recognized exception. Since consideration moved from Das and the contract was made expressly for Gopal's benefit, he is entitled to enforce the promise. Hence, Geeta is legally bound to pay the annuity to Gopal.

- 11. Mr. Sen, an elderly widower, executed a gift deed transferring his valuable house to his nephew, Kashish. Subsequently, it was discovered that Kashish had threatened Mr. Sen that, unless the property was gifted to him, he would file a false criminal complaint of harassment against him. Further, Kashish, being Mr. Sen's sole caretaker, emotionally influenced him into believing that transferring the property would guarantee him lifelong care and affection. Mr. Sen now seeks to set aside the transaction. Examine whether the gift deed is valid under the Indian Contract Act, 1872.**

(RTP Jan 2026)

- Ans.** Section 15 of the Indian Contract Act, 1872 defines coercion as committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawfully detaining property, with the

intention of compelling a person to enter into an agreement.

Section 16 defines undue influence as a situation where one party, being in a position to dominate the will of another, uses that position to obtain an unfair advantage. Under Sections 19 and 19A, contracts induced by coercion or undue influence are voidable at the option of the aggrieved party. In the present case, Kashish forced Mr. Sen to execute a gift deed by threatening to lodge false criminal proceedings, which constitutes coercion. Further, as Mr. Sen's caretaker and close relative, Kashish held a fiduciary position and emotionally manipulated him into believing that the transfer would secure lifelong care. This amounts to undue influence, since Kashish used his position to dominate Mr. Sen's will and obtain an unconscionable advantage.

Here, the gift deed suffers from two vitiating factors—coercion and undue influence. Therefore, it is voidable at the option of Mr. Sen. He can approach the court to have the deed set aside, and he is not bound to transfer his property under such unfair circumstances.

- 12. Mr. Rohan entered into a contract with Mr. Sohan to deliver 1,000 bags of cement to his construction site on or before 15th August. The payment was to be made immediately upon delivery. However, Rohan failed to deliver the cement by the stipulated date. On 25th August, Rohan offered to deliver the goods, but by that time, the delay had caused disruption to the construction schedule, resulting in Sohan losing a contract with a government department. Sohan refused to accept the delayed delivery and filed a suit for damages. Rohan contended that the delay was minor and argued that Sohan was obligated to accept the goods. Examine the rights and liabilities of the parties under the Indian Contract Act, 1872.**

(RTP Jan 2026)

Ans. As per section 52 of the Indian Contract Act, 1872, when the order of performance of reciprocal promises is expressly fixed, they must be performed in that order. While section 53 provides, if the promisor prevents the promisee from performing his promise, the promisee is entitled to compensation. Further, section 55 provides if time is expressly of the essence, and promisor fails, contract becomes voidable at the option of the promisee. If not of essence, contract continues but damages can be claimed for delay.

In the instant case, Rohan promised to deliver 1,000 bags of cement by 15th August, which was crucial for Sohan's construction project. Rohan failed to deliver on the stipulated date and instead offered the goods after 10 days. Because of this delay, Sohan's project was disrupted, and he lost a government contract.

In commercial contracts such as supply of materials for construction projects, time is usually regarded as the essence of the contract. Since Rohan failed to deliver the cement by the stipulated date, the contract became voidable at the option of Sohan. He was justified in refusing the delayed performance. Furthermore, under Section 53, Rohan's failure prevented Sohan from performing his reciprocal obligation with the government department, resulting in financial loss. Therefore, Sohan is entitled to reject the goods and claim damages from Rohan for the actual loss suffered. Rohan's defense of a "minor delay" is not valid under the law.

- 13. Mr. VG and Mr. PG were trading in unlisted shares for the last seven years. They used to**



borrow funds from each other whenever required for any trade. Within a week's time, they used to refund the money to each other as per circumstances of the case. They were following this practice for the last five years. On 25th January 2025, Mr. PG wants to buy 20,000 shares of an unlisted company @ ₹ 500/- each. But due to insufficiency of funds, he asked Mr. VG for ₹ 40 lakhs. Mr. VG transferred ₹ 40 lakhs to Mr. PG. After about three months, Mr. VG reminded that Mr. PG had not refunded ₹ 40 lakhs to him till then. He asked him to pay back his money. Mr. PG told him that he was trying very hard to sell the shares at a reasonable price of 10% more than the price at which he bought these shares but was unable to do so due to market conditions. He asked Mr. VG to sell his shares on his behalf and authorised him to appropriate the amount of loan of ₹ 40 lakhs with interest out of the sale proceeds. Mr. VG agreed to do so.

After about 15 days, when market started recovering Mr. PG denied and revoked the authorization by saying that he would sell his shares himself.

With reference to provisions of the Indian Contract Act, 1872, whether the revocation of said agency by Mr. PG was lawful?

(RTP Jan 2026)

Ans. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

The rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal. In the instant case, Mr. PG appointed Mr. VG to sell his shares on his behalf and authorized him to appropriate the amount of loan of ₹ 40 lakh with interest out of the sale proceeds. Since, interest was created in favour of Mr. VG, thus the revocation of the said agency is not lawful.

14. “Distinguish between a Contract of Indemnity and a Contract of Guarantee. Explain the points of distinction with reference to the Indian Contract Act, 1872.”

(RTP Jan 2026)

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

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a	The liability arises only on the non- performance of an



	contingency.	existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

- 15. Wagering agreements are void under Section 30 of the Indian Contract Act, 1872. However, certain transactions resemble wagering transactions but are valid in the eyes of law. Discuss such transactions.**

(RTP Jan 2026)

Ans. Wagering agreements are void under Section 30 of the Indian Contract Act, 1872. However, certain transactions resemble wagering transactions but are valid in the eyes of law which are following:

- (i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- (ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ₹ 1,000.
- (iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

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

(RTP SEP 2025)

Ans. Section 60 of the Indian Contract Act, 1872 provides, where the debtor does not intimate and there are no circumstances indicating to which debt the payment is to be applied, the creditor may apply

it at his discretion to any lawful debt actually due and payable to him from the debtor. However, it cannot be applied to a disputed debt.

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

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

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

(RTP SEP 2025)

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

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

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

- 18. Rohan of 17 years has purchased a mobile of ₹ 25,000 for his online classes from Mobile Sales Centre on credit. On due date, he did not make the payment of mobile. Mobile Sales Centre sued Rohan and his parents for the price of mobile. Rohan has ₹ 15,000 as his cash balance but his father has enough money to pay the price of mobile. Examine the given situation and answer who will be liable to pay the price of mobile as per the provisions of the Indian Contract Act, 1872? 5. Akhil ordered 100 Kgs of wheat to M/s Sahil Kirana Store, and it**

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

(RTP SEP 2025)

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

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

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

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

(RTP SEP 2025)

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

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

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

20. Rahul hired a car for 15 days from M/s Kushwah Travels. After five days, M/s Kushwah Travels demanded back his car from Rahul. He was also agreed to compensate for any loss suffered by Rahul due to such premature return of goods. But Rahul refused to return the

car before the period of bailment i.e. 15 days. M/s Kushwah Travels sued Rahul for recovery of car. Referring to the provisions of the Indian Contract Act, 1872, whether M/s Kushwah Travels can recover the car from the Rahul before the time fixed for bailment?

(RTP SEP 2025)

Ans. According to the Section 159 of the Indian Contract Act, 1872, when the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object. However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

In the given problem, Rahul hired a car for 15 days from M/s Kushwah Travels but just after five days, M/s Kushwah Travels demanded back his car from Rahul. Rahul refused to return the car before the period of bailment, i.e. 15 days. M/s Kushwah Travels filed suit against Rahul for recovery of car.

Premature recovery of goods bailed available only in case of gratuitous bailment. If bailment is for hire, this right is not available to bailor even he is ready to compensate for such premature return. Hence, M/s Kushwah Travels cannot recover back the goods before 15 days.

21. Ajay appoints Vijay to sell his electronic goods lying in his godown. He also agrees to give 10% commission on the sale price to Vijay. Afterwards, Ajay revokes Vijay's authority by sending the letter to Vijay. The letter was sent on 3rd March which was received by Vijay on 7th March. On 5th March, Vijay sold the goods worth ₹1,20,000. He claimed for commission from Ajay, but Ajay refused as he already revoked the agency before sale of goods. Referring the provisions of the Indian Contract Act, 1872, whether Ajay was liable to pay commission to Vijay?

(RTP SEP 2025)

Ans. According to section 208 of the Indian Contract Act, 1872, the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.

In the instant case, Vijay was appointed by Ajay to sell his electronic goods and for which Vijay will be given 10% commission on the sale price. Subsequently, Ajay revokes Vijay's authority by sending the letter to Vijay on 3rd March which was received by Vijay on 7th March. But on 5th March, Vijay already sold the goods worth ₹ 1,20,000. He claimed for commission from Ajay, but Ajay refused.

Since, Vijay came to know about revocation of agency after selling the goods, and so therefore, he has right to claim the commission from Ajay.

22. Explain the concept of Quantum Meruit with reference to the Indian Contract Act, 1872. Under what circumstances can a party claim compensation under this doctrine?

(RTP SEP 2025)

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

be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

- (1) It is only available if the original contract has been discharged.
- (2) The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum merit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

The claim for quantum meruit arises in the following cases:

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

23. Define co-sureties. State the rights available to surety against the co-sureties relating to contribution under the Indian Contract Act, 1872.

(RTP SEP 2025)

Ans. Rights of Surety against co-sureties

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

- (a) Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.
- (b) Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

24. Shri Shivay Temple Trust decided to get renovation of the temple under trust. For this purpose, the President of the trust discussed the budget with contractor. The contractor provided the budget of ₹ 5,00,000. After gaining enough membership to support the funds required renovating the temple, the committee entered in a contract with contractor for renovation. The plans for the proposed structure were submitted and passed. But as the membership list increased, the plans also expanded. Hence, the expected cost of construction



is increased from ₹ 5,00,000 to ₹ 7,00,000. Now, increased amount of ₹ 7,00,000 stayed approved and obligated by the committee and contractor. Renovation work was completed, and contractor demanded the payment from committee. Meanwhile, new members who promised to contribute did not turn up. President had filed the suit against the members who promised to contribute. Members denied on the views that their contract with committee to contribute was without any consideration hence invalid. State with reason whether committee will succeed under the provisions of the Indian Contract Act, 1872?

(RTP MAY 2025)

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

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

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

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

(RTP May 2025)

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

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

In other words, 'Misrepresentation' is wrong done without intention to deceive. Further, the aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract; or

accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true. Damages can be claimed in case of fraud not for misrepresentation.

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

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

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

(RTP May 2025)

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

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

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

- 27. M/s Janta Machine Tools & Co. contracted with M/s Ruchi Traders to make and deliver certain machinery by 31st July for ₹ 15 Lakhs. There was a labour strike in the factory of M/s Janta Machine Tools & Co. and it could not manufacture and deliver the machinery to M/s**



Ruchi Traders. Afterwards, M/s Ruchi Traders had to purchase the machinery from another manufacturer for ₹ 18 Lakhs. M/s Ruchi Traders was also prevented from performing a contract which was made with M/s Shiksha Technologies at the time of its contract with M/s Janta Machine Tools & Co. and were compelled to pay compensation of ₹ 2 Lakhs to M/s Shiksha Technologies. M/s Janta Machine Tools & Co. was very well informed by M/s Ruchi Traders about its contract with M/s Shiksha Technologies. M/s Ruchi Traders sued M/s Janta Machine Tools & Co for recovery of compensation of ₹ 3 Lakhs (i.e. ₹ 18 Lakhs – ₹ 15 Lakhs) plus ₹ 2 Lakhs given to M/s Shiksha Technologies. Advise under the provisions of the Indian Contract Act, 1872.

(RTP May 2025)

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

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

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

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

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

(RTP May 2025)

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

S. No.	Basis	Void Contract	Voidable Contract
1.	Meaning	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2.	Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of the other party.

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

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

(RTP May 2025)

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

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

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

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

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

(RTP May 2025)

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

- (a) Rights against the creditor;
- (b) Rights against the principal debtor;
- (c) Rights against co-sureties.

Right against the Creditor

- (a) **Surety's right to benefit of creditor's securities [Section 141]:** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.
- (b) **Right to set off:** If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.
- (c) **Right to share reduction:** The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

- (a) **Rights of subrogation [Section 140 of the Indian Contract Act, 1872]:** Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.
This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.
- (b) **Implied promise to indemnify surety [Section 145]:** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee but not sums which he paid wrongfully.

Rights against co-sureties

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

- (a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.
- (b) **Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

31. Mr. Sohan, a wealthy individual provided a loan of ₹ 80,000 to Mr. Mukesh on 26th February, 2023. The borrower, Mr. Mukesh asked for a further loan of ₹ 1,50,000. Mr. Sohan agreed but provided the loan in parts on different dates. He provided ₹ 1,00,000 on 28th February, 2023

and remaining ₹ 50,000 on 3rd March, 2023.

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

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

- (i) Whether the contention of Mr. Mukesh correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- (iii) What would be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist on any order of adjustment on their part?

(RTP Jan 2025)

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

- (i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
Therefore, the contention of Mr. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.
- (ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Hence in case Mr. Mukesh fails to specify the manner of appropriation of debt on part repayment, Mr. Sohan the creditor, can appropriate the payment as per his choice.
- (iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
Hence in case where neither Mr. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

32. Rama directs Shyam to sell laptops for him and agrees to give Shyam eleven percent (11%) commission on the sale price fixed by Rama for each laptop. As Government of India put

restrictions on import of Laptops, Rama thought that the prices of laptops might go up in near future and he revokes Shyam's authority for any further sale. Shyam, before receiving the letter at his end sold 5 laptops at the price fixed by Rama. Shyam asked for 11% commission on the sale of 5 Laptops for ₹ 1 lakh each. Explain under the provisions of the Indian Contract Act, 1872:

- (i) Whether sale of laptops after revoking Shyam's authority is binding on Rama?
- (ii) Whether Shyam will be able to recover his commission from Rama, if yes, what will be the amount of such commission?

(RTP Jan 2025)

Ans. When termination of agent's authority takes effect as to agent, and as to third persons [Section 208 of the Indian Contract Act, 1872]:

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

In the instant case,

- (i) The revocation of Shyam's authority becomes effective only when it is communicated to and received by Shyam. Since Shyam had not received the revocation letter at the time of selling the laptops, his authority to sell on behalf of Rama was still valid. Hence, the sale of laptops conducted by Shyam is binding on Rama.
- (ii) Shyam is entitled to receive his commission for the sales made while he still had the authority to sell. Since he sold the laptops before receiving the revocation, he is entitled to his commission as per the initial agreement with Rama.

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

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

(RTP Jan 2025)

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

Thus, a finder of lost goods has:

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

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

34. Paridhee, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Mittal, owner of MP Laptops, for purchase of Laptop on credit amounting

₹ 60,000/- on 1st August 2022. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2023. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Paridhee was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

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

- (i) By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?
- (ii) By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?
- (iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority?

(RTP Jan 2025)

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

- (i) By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, a minor.
- (ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.
In the instant case, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Paridhee.
- (iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified. Hence, in this case also, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, after she attains majority.

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

- (i) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- (ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
- (iii) X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

(RTP Jan 2025)

Ans. (i) The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto

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

(ii) The said agreement is void.

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

(iii) The said agreement is valid.

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

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

(RTP Jan 2025)

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

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

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

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

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

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (R), and therefore the guarantee is invalid. Furthermore, under Section 143, any guarantee

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

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

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

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts

(RTP Jan 2025)

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

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

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

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

PYQ (The Indian Contract Act, 1872)

38. ABC Infrastructure Ltd. was running business successfully from several years. P was the purchase manager of company. He authorized his agent Q to buy Raw Material on his behalf for construction of Roads in Delhi. He instructed Q to buy only Mazboot Brand of Cement @ ₹ 2,000 – 2,500 per ton to maintain quality of Roads in Delhi. However, Q bought 1,000 tons of Mazboot Brand of cement from Mr. R a very well-known vendor of ABC Infrastructure Ltd. @ ₹3,500/- per ton. Mr. Q has not disclosed the fact to R that he was buying cement for ABC Infrastructure Ltd. When P discovered this aspect, he refused to pay Mr. R and rejects the cement bought by Q on the ground that Q has exceeded the authority. Mr. R suffered a huge loss on account of this transaction. Give your opinion in accordance with provisions from the Indian Contract Act, 1872:

- (i) Whether P was bound to pay Mr. R for cement purchased by his agent Mr. Q?**
- (ii) On the other hand, Q being agent refused to accept any liability to compensate R. In this situation, Whether Mr. R can file a suit against Q?**

(7 Marks, PYQ May 2025)

Ans. Principal's liability when agent exceeds authority [Section 227 of the Indian Contract Act, 1872]: When an agent does more than he is authorised to do, and when the part of what he does,

which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal not bound when excess of agent's authority is not separable [Section 228]: Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

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

When the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.

In the instant case, Q violated the instructions of P by buying cement at ₹ 3,500 per ton, which is beyond the authorized price limit. Furthermore, Q did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

Therefore, the answers are

- (i) No, P was not bound to pay Mr. R, as the agent Q exceeded his authority, and the deviation was inseparable from the authorized act.
- (ii) Yes, Mr. R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the principal.

Alternative Answer

In the light of the given facts in the question, P, the Purchase Manager of the ABC Infrastructure Ltd., authorised Q his agent to buy raw material on his behalf for construction of roads in Delhi. He instructed Q to buy only Mazboot brand of cement @ ₹ 2000-2,500 per ton. However, Q, violated the instructions of P by buying cement at ₹3,500 per ton. Furthermore, he did not disclose to R that he was buying cement for ABC Infrastructure Ltd.

The stated issue marked in the question is related to the undisclosed principal and exceeding of his authority. Given situation can be dealt with the provisions under section 230, 231 & 233 of the Indian Contract Act.

According to the provision stated in section 230, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

However, there are exceptions where the agent is presumed to have agreed to be personally bound. Where the agent does not disclose the name of his principal or undisclosed principal (Principal unnamed), then there arises a presumption that he himself undertakes to be personally liable. Also, when the agent exceeds his authority, misleads the third person in believing that the agent has the requisite authority in doing the act. In that case the agent can be made liable personally for the breach of warranty of authority.

Further section 231 of the Indian Contract Act specifies rights of third parties to a contract made by undisclosed agent.

As per the provision, if an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

Section 233 gives the option to a third person to sue the Agent or the Principal. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of

them, liable.

Therefore, the following are the answers:

- (i) No, P was not bound to pay Mr. R for purchase of the cement @ ₹ 3500/- per ton, as the agent Q does not disclose the name of his principal and also exceeded his authority, thus making himself to be personally bound and liable for the doing of said transaction.
- (ii) Yes, in the light of the section 233, Mr. R is given an option to sue the agent or the Principal or both. Yes, R can file a suit against Q, as Q is personally liable for the contract made without disclosing about the ABC Infrastructure Ltd. and exceeding the authority given by the P (principal).

39. According to provisions of the Indian Contract Act, 1872, define the following terms with reference to contract of guarantee:

- (i) Nature and extent of Surety's Liability**
- (ii) Discharge of a Contract of Surety by Invalidation of the Contract of Guarantee.**

(6 Marks, PYQ, May 2025)

Ans. (i) Nature and extent of Surety's Liability [Section 128 of the Indian Contract Act, 1872]

- (A) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.
- (B) Liability of surety is of secondary nature as he is liable only on default of principal debtor.
- (c) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
- (D) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

(ii) Discharge of a contract of Surety by the invalidation of the contract of guarantee.

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

40. X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ₹ 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ₹ 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ₹ 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ₹ 60,000/-. X denied for compensation by saying that he was not aware about the engine and brakes fault. Y filed a

suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

- (i) Whether Y can withheld the amount of hire charges ₹ 50,000/- on account of non-payment of damages?**
- (ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car?**

(7 Marks, PYQ, May 2025)

Ans. Bailment: As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty to disclose faults in goods bailed in case of non- gratuitous bailment (Section 150):

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ₹ 50,000. During the journey, Y has to spend ₹ 10,000 for repair of engine and paid ₹ 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

- (i) Y can withhold the hire charges of ₹ 50,000 on account of non-payment of damages and claim an additional ₹10,000, from X.**
- (ii) X is liable for the full ₹ 60,000 (₹10,000 repair + ₹ 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.**

41. (i) Give your opinion with reference to provisions of the Indian Contract Act, 1872:

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

(4 Marks, PYQ, May 2025)

Ans. 1. According to section 42 of the Indian Contract Act, 1872, if two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

Hence, the legal representative can jointly discharge the obligations of joint promisor and promisee, after their death.

- 2.** As per section 43, each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary

intention appears from the contract.

Hence, the joint promisor may be compelled.

3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

42. What are the effects of Coercion? "Whether threat to commit suicide is coercion"? Elaborate with reference to provisions of the Indian Contract Act, 1872.

(2 Marks, PYQ, May 2025)

Ans. Effects of coercion under section 19 of the Indian Contract Act, 1872

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Threat to commit suicide – Whether it is coercion?

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

43. With reference to provisions of the Indian Contract Act, 1872 define the following terms:

- (i) Quasi-contracts and its salient features**
- (ii) Responsibility of finder of goods**

(6 Marks, PYQ, May 2025)

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

Salient features of quasi contracts:

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

(ii) Responsibility of finder of goods

As per section 71 of the Indian Contract Act, 1872, 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'. Thus, a finder of lost goods has:

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

44. Explain the following terms with reference to the Indian Contract Act, 1872:

(i) Pledge by mercantile agent

(ii) Pledge by person in possession under voidable contract

(6 Marks, PYQ, May 2025)

Ans. (i) Pledge by mercantile agent: According to section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent. Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

(ii) Pledge by person in possession under voidable contract

According to section 178A of the Indian Contract Act, 1872, When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

45. Bhuvika borrowed ₹ 4,75,000/- from her relative Madan on 5th April 2020 on interest @ 1% per month for 5 year for running her Cosmetics store. She was paying continuously instalment and interest every month. But due to sudden introduction of nature care products her products became obsolete. As a result, she was unable to pay monthly instalment and interest from May 2021 onwards. The debt got time barred by limitation Act. However, on account of continuous persuasions of her relatives, Bhuvika promised in writing to pay the outstanding amount shortly within a few months. Whether Madan can legally recover the debts from Bhuvika when the loan has already been time barred? Explain with reference to provisions of the Indian Contract Act, 1872.

(2 Marks, PYQ Jan 2026)

Ans. Promise to pay Time Barred Debt: Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation, it is valid without consideration [Section 25(3) of the Indian Contract Act, 1872].

Thus, in terms of the provisions of Section 25(3) of the Act, Madan can legally recover the debts with interest from Bhuvika since she had promised in writing to pay the outstanding amount shortly within a few months even though the loan has already been time barred.

46. A surety is said to be discharged when his liability comes to an end. Define various modes of Discharge of surety according to provisions of the Indian Contract Act, 1872.

(i) By revocation of the contract of guarantee (any two situations)

(ii) By the conduct of creditor (any two situation)

(iii) By the invalidation of the contract of guarantee (any two situations)

Ans. According to the provisions of the Indian Contract Act, 1872, a surety is said to be discharged when his liability as surety comes to an end.

The various modes of discharge of surety are:

- (i) By revocation of the contract of guarantee.
- (ii) By the conduct of the creditor, or
- (iii) By the invalidation of the contract of guarantee.

(i) By revocation of the Contract of Guarantee

- (a) Revocation of Continuing Guarantee by Notice (Section 130): The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. A specific guarantee can be revoked only if liability to principal debtor has not accrued.
- (b) Revocation of Continuing Guarantee by Surety's Death (Section 131): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.
- (c) By Novation [Section 62]: The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

(ii) By conduct of the creditor

- (a) By variance in terms of contract (Section 133): Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.
- (b) By release or discharge of principal debtor (Section 134): The surety is discharged if the creditor:
 - i. enters into a fresh/ new contract with principal debtor; by which the principal debtor is released, or
 - ii. does any act or omission, the legal consequence of which is the discharge of the principal debtor.
- (c) Discharge of surety 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 promises not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.
- (d) Discharge of surety by creditor's act or omission impairing surety's eventual remedy [Section 139]: 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.

(iii) By the invalidation of the contract of guarantee

- (a) Guarantee obtained by misrepresentation [Section 142]: Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and

assent, concerning a material part of the transaction, is invalid. (b) Guarantee obtained by concealment [Section 143]: Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

- (c) Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144): Where a person gives a guarantee upon a contract that the creditor shall not act upon it until nother person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

47. Some agreements are held to be opposed to public policy. Define any six agreements with reference to provisions of the Indian Contract Act, 1872. (6 Marks, PYQ Jan 2026)

OR

Some objects and consideration are unlawful. Define any six with reference to provisions of the Indian Contract Act, 1872. (6 Marks, PYQ Jan 2026)

Ans. First Alternate:

According to the provisions of the Indian Contract Act, 1872, some of the agreements which are held to be opposed to public policy are:

(i)	Trading with Enemy: Any trade with person owing allegiance to a government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.
(ii)	Stifling Prosecution: An agreement to stifle prosecution i.e. “an agreement to present proceedings already instituted from running their normal course using force” tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.
(iii)	Maintenance and Champerty: Maintenance is an agreement in which a person promises to maintain suit in which he has no interest. Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.
(iv)	Trafficking relating to Public Offices and Titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.
(v)	Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.
(vi)	Marriage Brokerage Agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.
(vii)	Interference with the Course of Justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy.

(viii)	Interest against Obligation: The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy. (1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid. (2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ₹ 200,000 privately; the agreement is void.
(ix)	Consideration Unlawful in Part: By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

OR

Second Alternate:

Some objects and consideration are unlawful

Under Section 23 of the Indian Contract Act, 1872 in each of the following cases the consideration or object of an agreement is said to be unlawful:

(i)	When consideration or object is forbidden by Law: Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.
(ii)	When consideration or object are of such a nature that if permitted, it would defeat the provisions of Law: If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law, the agreement is void.
(iii)	When it is Fraudulent: Agreements which are entered into to promote Fraud are Void.
(iv)	The general term "injury" means criminal or wrongful harm: The object or consideration is unlawful as it involves injury to the person or property of another.
(v)	When consideration is Immoral: Agreements where the object or consideration is unlawful, being immoral.
(vi)	When consideration is opposed to Public Policy: The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community.

48. What are the agreements which are held to be opposed to public policy under the Indian Contract Act, 1872. Explain any 6 such agreements. (6 Marks, PYQ Jan 2025)

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

(1) Trading with enemy: Any trade with person owing allegiance to a Government at war with

India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

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

Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

- (3) **Maintenance and Champerty:** Maintenance is an agreement in which a person promises to maintain suit in which he has no interest.

Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.

(a) It is unreasonable so as to be unjust to other party or

(b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

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

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

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

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

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

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

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

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

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

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

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

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

(3 Marks, PYQ, SEP 2024)

Ans. According to Section 69 of the Indian Contract Act, 1872, a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

In the instant case, Mr. M paid the electricity bill to avoid the disconnection that was pending due to Mr. L's failure to fulfil his contractual obligation. Hence, Mr. M is entitled to be reimbursed ₹ 50,000 from Mr. L.

- 50. Mr. A offered to sell 25 chairs to Mr. B @ ₹ 1,500 per chair on 12.02.2024. A promised B that he would keep the offer open till 15.02.2024. However, on 13.02.2024, he sold those chairs to Mr. C @ ₹ 1,700 per chair without the knowledge of B. Mr. B communicated the acceptance of the above offer on 14.02.2024.**

Advise, with reference to provisions of the Indian Contract Act, 1872 whether Mr. B can claim damages from Mr. A?

(2 Marks, PYQ, SEP 2024)

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

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

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



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

(2 Marks, PYQ, SEP 2024)

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

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

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

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

- 52. In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of the Indian Contract Act, 1872.**

(3 Marks, PYQ, SEP 2024)

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

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

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

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

(A) Agreement made based on natural love and affection

(B) Promise to pay time-barred debts

(3 Marks, PYQ, SEP 2024)

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

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

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

(iii) It must be in writing.

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

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

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



54. **Raghav found gold and diamond studded wristwatch value approximately ₹ 1,00,000/- on the roadside. He picked it up and then advertised in the newspaper that the true owner thereof can take the watch after showing proper evidence. After waiting for a certain period of time, when the true owner did not turn up, he gifted that wristwatch to his son Mahesh. A few days later, Madhav, the true owner of watch, somehow noticed his watch on wrist of Mahesh. He approached him to collect the same, but Mahesh refused. In the evening, Raghav called Madhav and told him that he incurred ₹ 20,000 to find the true owner if he fails to reimburse him the lawful expenses incurred on finding out the true owner, he will sue him for recovery thereof or retain the possession of the watch with him till recovery. Even he can sell the watch for recovery of expenses. Advise whether the following actions of Raghav were lawful according to provisions of The Indian Contract Act, 1872:**
- (A) **Gifting the wristwatch to his son.**
 - (B) **Warning Madhav to sue for recovery of lawful expenses incurred in finding true owner.**
 - (C) **Retaining the possession of wristwatch till recovery of lawful expenses.**
 - (D) **Selling of wristwatch for recovery of expenses.**

(4 Marks, PYQ, SEP 2024)

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

Thus, a finder of lost goods has:

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

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

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

- (1) when the thing is in danger of perishing or of losing the greater part of its value, or
- (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Hence, the answers are:

- (A) Gifting the wristwatch to his son Mahesh is unlawful. Raghav had no ownership rights over the watch and could not legally transfer it to someone else.
- (B) Warning Madhav to Sue for Recovery of Lawful Expenses: Raghav has no right to sue Madhav for the expenses voluntarily incurred by Raghav in finding the owner.

- (C) Retaining Possession of the Wristwatch Until Recovery of Lawful Expenses: Raghav's action of retaining the wristwatch until Madhav reimburses him for lawful expenses is valid.
- (D) Selling of Wristwatch for Recovery of Expenses: the watch is not perishable, and the expenses claimed (₹ 20,000) are far below two-thirds of the value of the watch (₹ 1,00,000). Therefore, Raghav does not have the right to sell the watch under these circumstances, and selling the watch would be unlawful.

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

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

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

(3 Marks, PYQ, SEP 2024)

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

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

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

In the instant case,

- (A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.
- (B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agreed.

56. In accordance with the provisions of the Indian Contract Act, 1872, answer the following:

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

(ii) Duties of the Pawnee

(6 Marks, PYQ, SEP 2024)



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

(ii) Duties of the Pawnee

Pawnee has the following duties:

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

57. Answer the following as per the provisions of the Indian Contract Act, 1872:

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

(4 Marks, PYQ, SEP 2024)

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

(2 Marks, PYQ, SEP 2024)

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

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

- (1) **Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal:** – When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.
- (2) **Where the agent does not disclose the name of his principal or undisclosed principal;** (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
- (3) **Non-existent or incompetent principal:** Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- (4) **Pretended agent** – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.
- (5) **When agent exceeds authority-** When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

(ii) Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872):

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

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

MTP (The Indian Contract Act, 1872)**58. Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.****(6 Marks, MTP Jan 2026 S-1)****Ans. The Indian Contract Act, 1872.**

Definition of Fraud under Section 17 of the Indian Contract Act, 1872:

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

According to Section 18, there is misrepresentation:

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

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement is untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim damages.

Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.
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59. Examine the validity of the following agreements under the provisions of the Indian Contract Act, 1872 and justify your answer:

- (i) Mrs. Palak pays a sum of ₹ 10,000 to a marriage bureau to provide information about the prospective grooms for her daughter's marriage.
- (ii) Bharat agrees with John to sell his white bull. Unknown to both the parties, the bull was dead at the time of agreement.
- (iii) Rishabh sells the goodwill of his shop to Omkar for ₹ 10,00,000 and promises not to carry on such similar business within the local limits so long as Omkar carries on like business.
- (iv) A property worth ₹ 2,00,000 was agreed to be sold for just ₹ 25,000 by a person of unsound mind.

(7 Marks, MTP Jan 2026 S-2)

Ans. The Indian Contract Act, 1872.

- (i) Under Section 10 of the Indian Contract Act, 1872, a valid contract requires free consent, lawful consideration, and a lawful object.
- (ii) In the instant case, the agreement to pay ₹ 10,000 in exchange for a service (providing information about prospective grooms) is lawful.
Hence, the agreement is valid.
- (ii) According to section 20, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.

(iii) In the instant case, the bull's death (unknown to both parties) constitutes a bilateral mistake regarding the subject matter of the contract.
Hence, the agreement is void.
Under Section 27, agreements in restraint of trade are void. However, an exception is provided for contracts involving the sale of goodwill. The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
In the instant case, the restriction is limited to the local area and does not extend indefinitely.
Hence, the agreement is valid.
- (iv) According to section 12, a contract by a person who is not of sound mind is void.
In the instant case, a property worth ₹ 2,00,000 was agreed to be sold for just ₹ 25,000 by a person of unsound mind.
Hence, the agreement is void.

60. X was running a business of Car on lease. One fine day, Y came to hire a car for 10 days for his business tour from Delhi to Amritsar. X offered him a Honda city for ₹ 50,000/- for 10 days on a condition that petrol and toll expenses will be borne by him. During the journey, engine of car was choked. Y has to spend ₹ 10,000/- for repair of engine. When he was coming back from Amritsar, brakes of car were not working, and a major accident of Y happened due to this. Y was admitted to hospital and paid a bill of ₹ 50,000 on recovery. Y asked X to compensate him charges for car repair and hospital expenses amounting ₹ 60,000/-. X denied for compensation by saying that he was not aware about the engine and brake's fault.

Y filed a suit against X for recovery of damages. Give your opinion with reference to provisions of the Indian Contract Act, 1872:

- (i) Whether Y can withheld the amount of hire charges ₹ 50,000/- on account of non-payment of damages?
- (ii) Whether Mr. X was liable to pay Damage as he was not aware of the fact of faults in car?

(7 Marks, MTP Sep 2025 S-1)

Ans. The Indian Contract Act, 1872.

Bailment: As per Section 148 of the Indian Contract Act, 1872, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty to disclose faults in goods bailed in case of non- gratuitous bailment (Section 150): If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Duty to pay necessary expenses in case of non-gratuitous bailment [Section 158]: The bailor is liable to pay the extraordinary expenses incurred by the bailee.

Bailor's responsibility to indemnify losses [Section 164]: It is the duty of bailor to indemnify all the losses and expenses, which bailee has to pay on account of defective goods.

In the instant case, Y took a car on lease from X for 10 days for ₹ 50,000. During the journey, Y has to spend ₹ 10,000 for repair of engine and paid ₹ 50,000 for hospital expenses due to accident because of fault in brakes of car. These are the extraordinary expenses and losses and it is the bailor's duty to bear such expenses and losses.

Therefore, the answers are:

- (i) Y can withhold the hire charges of ₹ 50,000 on account of non-payment of damages and claim an additional ₹10,000, from X.
- (ii) X is liable for the full ₹ 60,000 (₹10,000 repair + ₹ 50,000 hospital) as it is the bailor's duty to supply a car fit for the purpose for which it was hired.

61. "Explain the various persons by whom a contract may be performed as per the Indian Contract Act, 1872.

(6 Marks, MTP Sep 2025 S-1)

Ans. The Indian Contract Act, 1872.

By Whom a Contract may be Performed (Section 40, 41 and 42 of the Indian Contract Act, 1872)
The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor.

1. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
2. Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.
3. Legal Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37, para 2). But their liability under a contract is limited to the value of the property they inherit from the deceased.
4. Third persons: Effect of accepting performance from third person (Section 41): When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.
5. Joint promisors (Section 42): When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

-  **62. Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida, one at Block A and another at Block D. She also entered in contract with Sakshi to let out the flat at Block D. At the time of entering into contract, both Tanishka and Sakshi were unaware that Block D is completely destroyed due to earthquake. Afterwards knowing the facts Sakshi requested to transfer the contract in favour of flat at Block A. In the light of provisions of the Indian Contract Act, 1872, whether Tanishka is liable to handover the possession of flat at Block A in place of Block D?**

(4 Marks, MTP Sep 2025 S-2)

Ans. The Indian Contract Act, 1872.

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

title, price or quantity of the subject matter.

In the instant case, Tanishka purchased two flats in Ansal VVIP Homes at Greater Noida in Block A and Block D. She also entered in contract with Sakshi to letout the flat at Block D. But at that time the Block D was completely damaged by earthquake unknown to both Tanishka and Sakshi. Sakshi demanded the possession of flat at Block A. Here, the matter discussed in above problem is concerned with bilateral mistake. As in case of bilateral mistake, contract is void, both Tanishka and Sakshi are not bound with this contract. Hence Sakshi cannot demand the possession of flat at Block A from Tanishka.

- 63. Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.**

(3 Marks, MTP Sep 2025 S-2)

Ans. The Indian Contract Act, 1872.

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

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

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

- 64. Kajal, wife of Ajay, is lunatic. She purchased a Diamond set of ₹ 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay. The Jewellers filed suit against Ajay for recovery of price of Diamond set. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Jewellers is entitled to claim the price from Ajay?**

(3 Marks, MTP Sep 2025 S-2)

Ans. The Indian Contract Act, 1872.

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

In the instant case, Kajal, a lunatic, purchased a Diamond set of ₹ 15 Lakhs from a famous Jewellers on credit. The Jewellers demanded the payment from her husband, Ajay.

Here, Diamond set purchased by Kajal is not necessities generally.

Hence, the Jewellers cannot recover the amount of ₹ 15 Lakhs from Ajay.

65. Define a Contract of Guarantee under the Indian Contract Act, 1872. Also explain the essential features of a valid contract of guarantee.

(6 Marks, MTP Sep 2025 S-2)

Ans. The Indian Contract Act, 1872.

“Contract of guarantee” [Section 126 of the Indian Contract Act, 1872] Contract of guarantee: A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

Three parties are involved in a contract of guarantee

- (i) Surety- person who gives the guarantee
- (ii) Principal debtor- person in respect of whose default the guarantee is given
- (iii) Creditor- person to whom the guarantee is given

ESSENTIAL FEATURES OF A GUARANTEE

The following are the requisites of a valid guarantee:

1. Purpose: The purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.
2. Consideration: Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.
As per Section 127 consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee, but past consideration is no consideration for the contract of guarantee. Even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.
3. Existence of a liability: There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. The liability must be legally enforceable and not time barred.
4. No misrepresentation or concealment (section 142 and 143): Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)
Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143).
5. Writing not necessary: Section 126 expressly declares that a guarantee may be either oral or written.
6. Joining of the other co-sureties (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. That implies, the guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

66. Define the term Ratification under the Indian Contract Act, 1872. Explain the rights of a person as to acts done for him without his authority. What is the effect of ratification?

(6 Marks, MTP Sep 2025 S-2)

Ans. **The Indian Contract Act, 1872.**

Rights of person as to acts done for him without his authority, Effect of ratification [Section 196 of the Indian Contract Act, 1872]: Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. In simple words, "Ratification" means approving a previous act or transaction. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.

Essentials of a valid Ratification

- Ratification may be expressed or Implied [Section 197]: Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- Knowledge requisite for valid ratification [Section 198]: No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
- The whole transaction must be ratified [Section 199]: There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.
- Ratification cannot injure third person [Section 200]: When the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.
- Ratification within reasonable time: Ratification must be made within a reasonable period of time.
- Communication of Ratification: Ratification must be communicated to the other party.
- Act to be ratified must be valid: Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.

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

(6 Marks, MTP, May 2025 S-1)

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

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

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

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

- (ii) **Payment by an interested person (Section 69):** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- (iii) **Obligation of person enjoying benefits of non-gratuitous act (Section 70):** In term of section 70 of the Act “where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered”.

It thus follows that for a suit to succeed, the plaintiff must prove:

- (i) that he had done the act or had delivered the thing lawfully;
 - (ii) that he did not do so gratuitously; and
 - (iii) that the other person enjoyed the benefit.
- (iv) **Responsibility of finder of goods (Section 71):** ‘A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee’.
- Thus, a finder of lost goods has:
- (i) to take proper care of the property as man of ordinary prudence would take
 - (ii) no right to appropriate the goods and
 - (iii) to restore the goods if the owner is found.
- (v) **Money paid by mistake or under coercion (Section 72):** “A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it”.
- In all the above cases the contractual liability arose without any agreement between the parties.

68. Enumerate and explain the duties and obligations of an agent towards the principal under the Indian Contract Act, 1872.

(6 Marks, PYQ May 2025)

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

- (i) **Duty to follow instructions or customs:** According to Section 211 an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts

otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

- (ii) **Duty of reasonable care and skill:** According to section 212, an agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.
- (iii) **Duty to render proper accounts [Section 213]:** An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers.
- (iv) **Agent's duty to communicate with principal [Section 214]:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.
- (v) **Duty not to deal on his own account:** Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—
 - (a) repudiate the transaction, (Section 215)
 - (b) claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)
- (vi) **Duty not to make secret profits:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.
- (vii) **Duty not to delegate:** According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.
- (viii) **Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.
- (ix) **Duty not to use any confidential information received in the course of agency against the principal.**

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

1. **On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.
2. **On fulfillment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.
3. **By Notice:**
 - (a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.
 - (b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).
4. **By death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.
5. **Destruction of the subject matter:** A bailment is terminated if the subject matter of the bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for the purpose of bailment.

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

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

(7 Marks, MTP Jan 2025 S-1)

Ans. As per section 126 of the Indian Contract Act, 1872, the contract of guarantee is defined as a contract to perform the promise or discharge the liability of a third person in case of his default. In this case, Sooraj has given a guarantee for Pankaj 's payment obligation towards Rahul. When Pankaj defaulted after making four monthly instalments and became insolvent, Sooraj 's liability as a guarantor will come into existence.

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

Since Pankaj failed to pay the remaining instalments due to insolvency, Sooraj, as the guarantor, is liable to pay the balance price of the water purifier to Rahul. In the given situation, Sooraj will have to pay the balance amount of ₹ 30,000 to Rahul. $[54,000 - (4 \times 6,000)]$ In the second situation, Rahul sold the water purifier misrepresenting it as having a copper filter, while it actually has a normal filter; this changes the situation significantly.

According to Section 142 of the Act, any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Here, guarantee is obtained by means of misrepresentation made by the creditor (Rahul), and therefore the guarantee is invalid. Furthermore, under Section 143, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

Here Rahul misrepresented the filter type and both Pankaj and Sooraj were unaware of this fact. The creditor (Rahul) has obtained the guarantee by remaining silent as to material circumstances. Therefore, the guarantee obtained from Sooraj will be considered to be invalid. Consequently, Sooraj cannot be held liable to pay the balance price of the water purifier to Rahul.

71. **Mr. R extended a loan to Mr. D with X, Y, and Z as sureties. Each surety executed a bond with varying penalty amounts, X with a penalty of ₹ 10,000, Y with ₹ 20,000 and Z with ₹ 40,000, in the event of Mr. D's failure to repay the borrowed money to Mr. R. Examine the liabilities of the sureties in accordance with the Indian Contract Act, 1872, when Mr. D defaults to the tune of ₹ 42,000. Additionally, assess the situation, if there is no contractual arrangement among the sureties.** (4 Marks, MTP Jan 2025 S-1)

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

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

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

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

(3 Marks, MTP Jan 2025 S-1)

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

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

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

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

(6 Marks, , MTP Jan 2025 S-2)

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

- (a) Rights against the creditor;
- (b) Rights against the principal debtor;
- (c) Rights against co-sureties.

Right against the Creditor

- (a) **Surety's right to benefit of creditor's securities [Section 141]:** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.
- (b) **Right to set off:** If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor.
- (c) **Right to share reduction:** The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

Right against the principal debtor

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

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

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

Rights against co-sureties

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

- (a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.
- (b) **Liability of co-sureties bound in different sums (Section 147):** The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

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

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid. (4 Marks, MTP Jan 2025 S-2)

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

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

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

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

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

75. Answer the following as per the provisions of the Indian Contract Act, 1872:

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

(4 Marks, MTP Jan 2025 S-2)

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

(2 Marks, MTP Jan 2025 S-2)

OR

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

(6 Marks, MTP Jan 2025 S-2)

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

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

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

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

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

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

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

(ii) Rights of Indemnity-holder when sued (Section 125 of the Indian Contract Act, 1872):

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

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

OR

(b) Essentials of a Contingent Contract

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

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

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

Rules Relating to Enforcement of a contingent contract:

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

- (a) **Enforcement of contracts contingent on an event happening:** Section 32 says that "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void".
- (b) **Enforcement of contracts contingent on an event not happening:** Section 33 says that "Where a contingent contract is made to do or not to do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before".
- (c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**
Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies".
- (d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- (e) **Contingent on specified event not happening within fixed time:** Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event

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

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

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

(4 Marks, MTP Sept. 2024 S-1)

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

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

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

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

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

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

(C) If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound."

Sahil says nothing.

(3 Marks, MTP Sept. 2024 S-1)

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

- (A) This contract is valid since as per section 17, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- (B) This contract is not valid since as per section 17, it becomes Sahil's duty to tell Rohan about the unsoundness of the horse because a fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud.
- (C) This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud.

78. Due to urgent need of money amounting to ₹3,00,000, Pawan approached Raman and asked him for the money. Raman lent the money on the guarantee of Suraj and Tarun. Pawan makes default in payment and Suraj pays full amount to Raman. Suraj, afterwards, claimed contribution from Tarun but Tarun refused to contribute on the basis that there is no contract between Suraj and him. Examine referring to the provisions of the Indian Contract Act, 1872, whether Tarun can escape from his liability. (3 Marks, MTP Sept. 2024 S-1)

Ans. Equality of burden is the basis of Co-suretyship. This is contained in section 146 of the Indian Contract Act, 1872, which states that "unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor. Accordingly, on the default of Pawan in payment, Tarun cannot escape from his liability. Both the sureties Suraj and Tarun are liable to pay equally, in absence of any contract between them.

79. How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end?

(6 Marks, MTP Sept. 2024 S-1)

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

- (i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be
 - (1) Actual performance; or
 - (2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

- (ii) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.
- (iii) **Discharge by impossibility of performance:** The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:
 - (a) an unforeseen change in law;

- (b) the destruction of the subject-matter essential to that performance;
- (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;
- (d) the declaration of a war (Section 56).
- (iv) **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.
- (v) **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.
- (vi) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.
- (vii) **Promisee may waive or remit performance of promise:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract may be discharged by remission. (Section 63)
- (viii) **Effects of neglect of promisee to afford promisor reasonable facilities for performance:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)
- (ix) **Merger of rights:** Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

80. “An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived”. Also, discuss the effect of anticipatory breach of contracts under the Indian Contract Act, 1872. (6 Marks, MTP Sept. 2024 S-2)

Ans. An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

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

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

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

- 81. Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2024, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2024 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2024 for which Mr. Vikas did not agree. On 1st August, 2024, Mr. Gaurav claimed compensation of ₹20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention. (4 Marks, MTP Sept. 2024 S-2)**

- Ans. Subsequent or Supervening impossibility (Becomes impossible after entering into contract):**
When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ₹70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

- 82. R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why under the provisions of the Indian Contract Act, 1872? (3 Marks, MTP Sept. 2024 S-2)**

- Ans.** Section 161 of the Indian Contract Act, 1872 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part. Hence, in the instant case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.



83. Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872. (6 Marks, MTP Sept. 2024 S-2)

Ans. Consideration [Section 2(d) of the Indian Contract Act, 1872]

“When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

The essential characteristics of a valid consideration are as follows:

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

84. Explain the terms “Trafficking relating to public offices and titles” and “Stifling prosecution” as per the Indian Contract Act, 1872. (6 Marks, MTP Sept. 2024 S-2)

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

- (1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

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

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.

Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

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The Sale of Goods Act, 1930

RTP (The Sale of Goods Act, 1930)

1. Classify the following transactions according to the types of goods they are:

- (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
- (ii) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year.

(RTP May 2026)

- Ans.**
- (i) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
 - (ii) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.
 - (iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'



2. Mr. Rahul, a wholesale trader in Delhi, placed an order with Mr. Kapil, a textile merchant, for 50 rolls of “premium silk cloth” at an agreed price. It was clearly mentioned that the cloth should be of premium-quality silk and suitable for manufacturing wedding garments. Mr. Kapil delivered the goods on the scheduled date. On a casual examination at the time of delivery, the rolls appeared to be fine, so Rahul accepted them.

However, later, while cutting and using the cloth for tailoring, it was discovered that the rolls contained a mixture of synthetic fibers and had hidden defects such as small holes and stains. These defects made the cloth unfit for making wedding garments, causing heavy losses to Rahul. When Rahul demanded a refund, Kapil refused, contending that Rahul had already inspected the goods and accepted delivery.

State, with reasons, whether Rahul can reject the goods and recover the price under the Sale of Goods Act, 1930.

(RTP May 2026)

- Ans.** As per Section 15 of the Sale of Goods Act, 1930, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. Further, as per Section 16(2), when goods are bought by description from a seller who deals in such goods, there is an implied condition that they shall be of merchantable quality. However, if the buyer has examined the goods, the seller is not liable for defects which such examination ought

to have revealed. But where the defects are latent and cannot be discovered on ordinary inspection, the seller remains liable.

In the present case, Rahul, a trader, purchased 50 rolls of “premium silk cloth” from Kapil for the specific purpose of manufacturing wedding garments. On a casual inspection at the time of delivery, the cloth appeared to be fine. However, when used for tailoring, it was discovered that the fabric contained synthetic fibers and had hidden holes and stains. These defects were not visible during a simple inspection at the time of delivery but made the cloth unfit for its intended purpose. Kapil refused to refund the amount, stating that Rahul had already accepted the goods.

On the basis of the above provisions and facts, it is clear that the cloth did not correspond with its description of “premium silk” and was also not of merchantable quality. The defects were latent and could not have been noticed on ordinary inspection. Hence, Rahul is entitled to reject the goods and recover the price. Kapil cannot avoid liability merely on the ground that casual inspection was done by Rahul.



3. **Mr. Varun, a laptop distributor, delivered 20 laptops to his friend Mr. Rohit on the condition of “sale on approval or return within 10 days.” Rohit neither returned the laptops within the stipulated period nor informed Varun of any rejection. Instead, he kept the laptops in his office showroom and sold 5 of them to Mr. Anuj, claiming to be the absolute owner. Anuj purchased the laptops in good faith, paid full consideration, and even issued a receipt.**

After 15 days, Varun demanded the return of all the laptops, including those sold to Anuj. Rohit refused, arguing that he had acted as the owner. Anuj also defended himself, claiming that he was a bona fide purchaser for value. Varun, however, relied on the principle that “no one can transfer a better title than he himself has.”

Decide, under the Sale of Goods Act, 1930, whether Anuj has acquired a valid title and whether Varun can recover the goods.

(RTP May 2026)

Ans. Section 24 of the Sale of Goods Act, 1930 states that when goods are delivered on approval or “sale or return” basis, the property passes to the buyer if he accepts them, does any act adopting the transaction such as reselling, or retains the goods beyond the fixed or reasonable time. Section 27 provides the general rule that no one can transfer a better title than he himself has. But the Act recognizes exceptions to protect bona fide purchasers.

Under Section 30(1), if a seller in possession of goods resells them to a buyer in good faith, such buyer gets a valid title. Similarly, under Section 30(2), if a buyer with the seller’s consent obtains possession and resells before ownership has passed the sub-buyer in good faith also acquires good title.

Thus, once goods on approval are retained beyond time or resold, ownership passes, and a purchaser in good faith is protected. In the present case, Varun delivered 20 laptops to Rohit on approval for 10 days. Rohit neither rejected nor returned the goods but displayed them in his

showroom and sold 5 laptops to Anuj. This constituted an act of adopting the transaction under Section 24; therefore, ownership of all the laptops passed to Rohit. Since Anuj purchased them in good faith, for value, and without notice of Varun's rights, he falls within the exceptions under Sections 27 and 30.

Therefore, it is clear that by retaining the laptops beyond approval period and selling part of them, Rohit became the owner of the goods. His sale to Anuj was valid, and Anuj, being a bona fide purchaser, acquired a good title. Varun cannot recover the laptops from Anuj but may claim the price of the remaining from Rohit. Hence, Varun's contention is not legally sustainable.

4. Discuss the rights of the buyer against the seller when the seller commits a breach of contract under the Sale of Goods Act, 1930.

(RTP May 2026)

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

- 1. Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
- 2. Suit for specific performance (Section 58):** Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
This remedy is allowed by the court subject to these conditions:
 - (a) The contract must be for the sale of specific and ascertained goods.
 - (b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.
 - (c) It empowers the court to order specific performance where damages would not be an adequate remedy.
 - (d) It will be granted as a remedy if goods are of special nature or are unique.
- 3. Suit for breach of warranty (Section 59):** Where there is a breach of warranty on the part of the seller, or where the buyer elects to treat a breach of condition as a breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
- 4. Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

5. Suit for interest:

- (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest

or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

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

5. Explain the rule relating to the passing of property in specific or ascertained goods under Section 19 of the Sale of Goods Act, 1930. How is the intention of the parties as to the passing of property ascertained?

(RTP May 2026)

Ans. Property (Specific or ascertained goods) passes when intended to pass (Section 19 of the Sale of Goods Act, 1930):

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. [sub-section (1)] For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. [sub-section (2)] Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. [sub-section (3)]

Stages of goods while passing of property

- 1. Specific goods in a deliverable state (Section 20):** Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.
- 2. Specific goods to be put into a deliverable state (Section 21):** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.
- 3. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22):** Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

6. Mr. Rohit, a trader, entered into a contract with Mr. Mohan for the purchase of 100 chairs for a total consideration of ₹ 1,00,000. The agreement expressly provided that ownership of the goods would pass to Rohit immediately, while the price was to be paid in two equal instalments within 30 days. The goods were duly delivered in accordance with the contract.

However, when the second instalment became due, Rohit defaulted in payment and contended that since a part of the price remained unpaid, the transaction amounted only to an agreement to sell and not a completed sale. On this basis, he refused to pay the balance amount.

Examine the legal validity of Rohit's contention with reference to the Sale of Goods Act, 1930.

(RTP Jan 2026)

Ans. Section 4 of the Sale of Goods Act, 1930, defines a contract of sale of goods as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. If the property in goods is transferred at the time of the contract, it is a sale. If the transfer is to take place in the future or subject to some conditions, it is an agreement to sell. Thus, the distinction lies in the passing of ownership, not in the time of payment or delivery. Once ownership is transferred, the buyer becomes owner and must pay the agreed consideration.

In the present case, Mohan delivered 100 chairs to Rohit and ownership was intended to pass immediately as per their agreement. However, Rohit failed to pay the second installment and contended that the contract was incomplete and only an agreement to sell.

Since the ownership of chairs had already passed to Rohit at the time of delivery, the contract was a completed sale under Section 4 of the Act. Rohit's contention that it was only an agreement to sell is legally unsustainable. He is bound to pay the balance of the price to Mohan, and his refusal amounts to a breach of contract.



7. Mr. Sameer, a retail shopkeeper, purchased 10 cartons of packaged fruit juice bottles from Fresh Foods Ltd., a reputed beverage dealer. The cartons were sealed and appeared to be in good condition, and therefore Sameer accepted them without objection. Subsequently, when the bottles were sold to customers, it was discovered that several of them were contaminated with fungus. A few customers even fell ill after consuming the juice, compelling Sameer to issue refunds and causing significant reputational damage to his business.

When Sameer demanded a refund and compensation from Fresh Foods Ltd., the seller refused, contending that the goods had been sealed and were accepted by him at the time of delivery. Examine whether Sameer can succeed in his claim under the Sale of Goods Act, 1930.

(RTP Jan 2026)

Ans. As per Section 16(2) of the Sale of Goods Act, 1930, when goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. In addition, in case of eatables and consumable goods, there is an implied condition as to wholesomeness, i.e., the goods must be fit for human consumption. Where such goods are harmful or dangerous to health, the buyer is entitled to reject them and also claim damages. In this case, Sameer purchased fruit juice bottles from Fresh Foods Ltd. The cartons were sealed and appeared proper from outside. However, when consumed, they were found contaminated, making them harmful for human health. Customers who consumed them became sick, and Sameer suffered both financial and reputational loss. Fresh Foods Ltd. denied liability

citing that the cartons were sealed and accepted. On the basis of the above provisions and facts, the juice bottles were not of merchantable quality and also failed the implied condition of wholesomeness. It was the duty of the seller to ensure that food products supplied were fit for human consumption. Hence, Sameer is entitled to reject the goods, recover the price, and also claim damages for the loss suffered. The seller cannot escape liability merely because the cartons were sealed.

8. **A government department conducted an auction of used vehicles. Mr. Suresh bid for a truck at ₹5,00,000. Before the auctioneer's hammer fell, Suresh tried to withdraw his bid, but the auctioneer refused. Later, the auctioneer also bid through his agent without prior notice to the bidders. Another bidder, Mr. Akash, complained that the auction was not fairly conducted. Decide, with reference to the Sale of Goods Act, 1930, whether the auction sale is valid.**

(RTP Jan 2026)

Ans. Section 64 of the Sale of Goods Act, 1930 deals with auction sales. A sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until then, a bidder may withdraw his bid. The seller has the right to reserve bidding, but if he intends to bid himself or through an agent, such right must be expressly notified. If the seller bids without such notice, the sale may be treated as fraudulent and voidable.

Here, Suresh made a bid of ₹5,00,000 for a truck but attempted to withdraw it before the fall of the hammer. Legally, he was entitled to do so. The auctioneer's refusal to permit withdrawal was incorrect. Further, the seller also bid through his agent without notifying bidders of such right, which amounts to fraudulent conduct under Section 64.

Therefore, on the basis of the above provisions, the auctioneer's refusal to allow Suresh to withdraw his bid was invalid, as a bid can be withdrawn before completion of sale. Further, the seller's secret bidding through an agent without notice made the auction unfair and voidable at the option of buyers. Hence, the auction was not validly conducted.

9. **What is meant by Reservation of Right of Disposal? Explain the circumstances under which the seller is deemed to have reserved this right under the Sale of Goods Act, 1930.**

(RTP Jan 2026)

Ans. Reservation of right of disposal (Section 25 of the Sale of Goods Act, 1930)

This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled. (sub-section 1)

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

- (1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal. (sub-section 2)
- (2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him. (sub-section 3)



10. “What is meant by the doctrine of Caveat Emptor? State the conditions for its applicability and discuss the exceptions to this doctrine under the Sale of Goods Act, 1930.”

(RTP Jan 2026)

Ans. Caveat Emptor

In case of sale of goods, the doctrine ‘Caveat Emptor’ means ‘let the buyer beware’. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible. The rule of Caveat Emptor is laid down in the Section 16, which states that, “subject to the provisions of this Act or 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”.

Following are the conditions to be satisfied:

- if the buyer had made known to the seller the purpose of his purchase, and
- the buyer relied on the seller’s skill and judgement, and
- seller’s business to supply goods of that description

Exceptions: The doctrine of Caveat Emptor is, however, subject to the following exceptions:

- 1. Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller’s skill or judgment and the goods are of a description which is in the course of seller’s business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].
- 2. Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)]. Here, the buyer is relying on the particular brand name.

3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
 4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable for latent defects. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
 5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
 6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
 7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
 8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.
11. **Mr. G sold some goods to Mr. H for a certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged. Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending?**

(RTP SEP 2025)

- Ans.** (i) According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for

the care and custody of the goods.

Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

- (ii) If the price of the goods were not settled in cash and some amount would have been pending then Mr. G would be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:
- (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]
 - (b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

- 12. Mrs. Seema went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ₹ 125 per kg to which she agreed. Mrs. Seema insisted that she would like to see the sample of what would be provided to her by the shopkeeper before she agreed upon such a purchase. The shopkeeper showed her a bowl of rice as a sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice, it contained a mix of long and short grains. The cook on opening the bags complained that the dish, if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Seema wants to file a suit of fraud against the seller alleging him of selling a mix of good and cheap quality rice. Will she be successful? What would be your answer in case Mrs. Seema specified her exact requirement as to length of rice?**

(RTP SEP 2025)

- Ans.** (i) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:
- (a) the bulk shall correspond with the sample in quality;
 - (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - (c) the goods shall be free from an defect, rendering them unmerchantable, which would not be apparent in reasonable examination of the sample.

In the instant case, in the light of the stated above provision, Mrs. Seema will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

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

13. (i) **Raghav arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the clock. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930?**
- (ii) **X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930?**

(RTP SEP 2025)

- Ans.** (i) By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Deepa gives the highest bid in the auction for the sale of an antic wall clock arranged by Raghav. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of the above provisions, it can be concluded that the sale by auction cannot be completed until the hammer comes in its normal position after falling onto the table. Hence, in the given problem, sale is not completed. Deepa will not be liable for loss and can avoid the contract.

- (ii) Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it will not become an uncertain and invalid agreement. It will rather be a valid 9 and section 10 of the Sale of Goods Act, 1930)

In the given case, X and Y have entered into a contract for the sale of a car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X and X can recover a reasonable price of the car from Y.

14. (i) **State the various essential elements involved in the sale of unascertained goods and their appropriation as per the Sale of Goods Act, 1930.**
- (ii) **What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.**

(RTP SEP 2025)

- Ans.** (i) **Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act,**

1930): Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) There is a contract for the sale of unascertained or future goods.
 - (b) The goods should conform to the description and quality stated in the contract.
 - (c) The goods must be in a deliverable state.
 - (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
 - (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
 - (f) The assent may be express or implied.
 - (g) The assent may be given either before or after appropriation.
- (ii) (A) **Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.
- (B) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

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

(RTP May 2025)

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

in the goods is to be transferred.

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

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



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

(RTP May 2025)

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

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

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

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

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

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

(RTP May 2025)

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

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

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

- 18. (i) Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:**
- (A) Bid by seller with or without notification**
 - (B) Bidder to retract from his bid**
 - (C) Effect of pretending bidding**
- (ii) Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930.**

(RTP May 2025)

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

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

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

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

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

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

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

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

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



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

(RTP Jan 2025)

- Ans. (i) Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void, if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.
- (ii) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

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

(RTP Jan 2025)

- Ans. (i) Sale by sample [Section 17 of the Sale of Goods Act, 1930]:** In a contract of sale by sample, there is an implied condition that
- the bulk shall correspond with the sample in quality;
 - the buyer shall have a reasonable opportunity of comparing the bulk with the sample,
 - the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.
- (ii) The following are the implied warranties operative under the Act:**
- 1. Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the

seller for the breach of the warranty.

2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

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

Answer the following questions as per the Sale of Goods Act, 1930.

- (i) **State with reasons whether Shubhangi can recover the amount from the Jeweller.**
- (ii) **What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?**

(RTP Jan 2025)

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

- (i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.
- (ii) If Jeweller offers to bring the necklace in original position by repairing, he cannot charge extra cost from Shubhangi. Even though he has to bear some expenses for repair; he cannot charge it

from Shubhangi.

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

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

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

(RTP Jan 2025)

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

- (i) When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.
- (ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

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

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

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

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. Mrs. Kanchan examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

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

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

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

(RTP Jan 2025)

- Ans.** (i) As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:
- (a) the bulk shall correspond with the sample in quality;
 - (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Kanchan will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.
- (ii) In case Mrs. Kanchan specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

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

(RTP Jan 2025)

Ans. Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

PYQ (The Sale of Goods Act, 1930)



25. S purchased a dress from a reputed showroom and made the payment in cash. The dress she purchased require some alteration. The shopkeeper assured S that it would take just one day to get the dress altered. It was agreed that once the dress was altered the shopkeeper would inform S through phone and she would collect the dress. Next day, by evening the dress was altered and kept ready to be delivered to S. The shopkeeper however forgot to inform S that the dress was ready.

In the meantime, a short circuit occurred near the delivery counter of the shop and some packets ready for delivery caught fire. After waiting for 10 days, when, S went to collect her dress she was informed that she came late and her dress was burnt in fire. S, then asked for refund of money what she paid. The shopkeeper refused, by saying that the dress was kept ready the very next day of purchase and the loss due to fire occurred after a week. He refused

to bear the liability by saying that if S had collected the dress on time, it would not have been burnt. S insisted that she was waiting for a call from the shop and thus, entitled to claim the refund of cost of dress.

Examine, with reference to the provisions of the Sale of Goods Act, 1930, whether shopkeeper will be liable to refund the cost of dress to S?

(7 Marks, PYQ, May 2025)

Ans. Specific goods to be put into a deliverable state (Section 21 of the Sale of Goods Act, 1930):

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

According to section 26, “unless otherwise agreed, the goods remain at the seller’s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer’s risk whether delivery has been made or not”.

However, Section 26 also lays down an exception to the rule that ‘risk follows ownership.’ It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

In the instant case, S had paid in full and purchased a specific dress but the dress required alteration, and it was agreed that the shopkeeper would inform S after alteration for collection. The ownership had already passed to S when she paid for the dress, subject to alteration. The delivery was conditional upon the shopkeeper informing S after alteration.

Even though the ownership may have passed to S, the seller (shopkeeper) failed to complete the delivery by not informing S. Under Section 26, when delivery is delayed due to the fault of the seller, the loss falls upon the party at fault.

Therefore, the shopkeeper is liable to refund the cost of the dress to S.

Alternative Answer

The given problem is based on the concept “Agreement to Sell” under section 4 of the Sale of Goods Act, 1930. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell.” Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date. Hence, in an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

In the instant case, though S had paid and purchased a specific dress, but the dress required alteration. Shopkeeper assured S that it would take just one day to get the dress altered and it was agreed that he would inform S after alteration for collection. This reflects that transfer of property in goods is to be transferred subject to fulfilment of the condition i.e., after the alteration.

applicable here. This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms

of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Therefore, still the ownership lies with the seller on account of non-fulfilment of condition as to informing to the S that the dress is altered and is ready.

Further the plea taken by Shopkeeper that 10 days were passed after the alteration done and he is not liable for damage caused, is not justifiable on account of not being a reasonable circumstance and a ground.

Hence, in the light of the given facts, the shopkeeper is liable to refund the cost of the dress to S.

- 26. P sold certain antique items to Q for ₹ 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment. Q transferred a sum of ₹ 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency.**

By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods.

According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only ₹ 20,000/- was left to be paid?

(4 Marks, PYQ, May 2025)

Ans. Rights of lien (Section 47 of the Sale of Goods Act, 1930)

An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.

Exercise of right of lien: This right can be exercised by him in the following cases only:

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

In the instant case, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024. Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ₹ 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

- 27. An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest bidder". During the auction, L bids for an antique sculpture, worth ₹ 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected**

rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees. Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930.

(3 Marks, PYQ, May 2025)

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

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

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce "you are the highest bidder".

Therefore, L's claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.

28. With reference to provisions of the Sale of Goods Act, 1930, answer the following:



- (i) What do you mean by Reservation of right of disposal? State the circumstances under which right of disposal may be reserved.
- (ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer losses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition.

(7 Marks, PYQ, May 2025)

Ans. (i) Reservation of right of disposal: Section 25 of the Sale of Goods Act, 1930, preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

- (1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.
- (2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to

secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

- (ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

29. With reference to the provisions of the Sale of Goods Act, 1930 what is the major difference between condition and warranty? Examine the following cases and comment whether it is a 'Breach of Condition' or 'Breach of Warranty' by quoting the relevant provisions of the Sale of Goods Act, 1930:

- (i) Ashutosh purchased a second hand laptop from Sudhir for ₹ 10,000/-. After a month, Ashutosh came to know that Sudhir was not the true owner of the laptop. Actually Mahindra (a friend of Sudhir) was the true owner of the laptop, who unknowingly left his laptop at the Sudhir's residence. As a result Ashutosh's position became awkward. What would be course of action available to Ashutosh in this regard? (2 Marks)

- (ii) Anita ordered to purchase an Italian couch from a prominent e-commerce platform. When the order was delivered, it was found that the couch was not Italian as narrated on the e-commerce platform. What would be course of action available to Anita in this regard?

(2 Marks, PYQ Jan 2026)

- (iii) Rishabh purchased a car costing ₹ 7 lakh by availing bank loan which is hypothecated in favour of the bank. Due to some medical emergency, Rishabh took another loan of ₹ 5 Lakhs from his friend Sandeep on the basis of security of his car. When the fact of bank loan came to knowledge of Sandeep, Rishabh denied paying the loan amount to Sandeep. What would be course of action available to Sandeep in this regard?

(3 Marks, PYQ Jan 2026)

Ans. (a) Major difference between a Condition and Warranty under the Sale of Goods Act, 1930:

The following are the major differences between a 'Condition' and a 'Warranty' as per the provisions of the Sale of Goods Act, 1930.

Point of Differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

- (i) This is a case of 'Breach of Warranty' as to undisturbed possession. As per Section 14(b) of the Sale of Goods Act, 1930, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty. Therefore, Sudhir shall be held responsible for a breach and Ashutosh is entitled to sue Sudhir, the seller without title, for the recovery of the purchase price.

Alternative Answer (i)

This is a case of 'Breach of Condition' as to Title.

As per Section 14(a) of the Act, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass.

If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

In the given case, Sudhir has no right to sell as he was not the actual owner of laptop even though he sold the laptop to Ashutosh for consideration of ₹ 10,000/-. As the title of Sudhir turned out to be defective, Ashutosh should return the laptop to Mahendra and recover the full price paid from Sudhir.

Thus, Sudhir has breached the implied condition as to title.

Therefore, Sudhir shall be held responsible for a breach and Ashutosh is entitled to sue Sudhir, the seller without title, for the recovery of the purchase price.

- (ii) This is a case of breach of condition of 'Sale by Description'. As per Section 15 of the Act, where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description.

The buyer is not bound to accept and pay for the goods which are not in accordance with description.

Therefore, Anita is entitled to reject the Couch as it was not Italian as narrated on the e-commerce platform and ask for refund if already paid.

(iii) This is a case of 'Breach of Warranty' as to Non-existence of Encumbrances.

As per Section 14(c) of the Act, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

In the given case the car was already hypothecated in favour of a bank. However, Rishabh took another loan of ₹ 5 Lakhs from his friend Sandeep on the basis of security of his car, without informing him about hypothecation of car.

Therefore, Sandeep may file a suit against Rishabh for recovery of the money with interest. It may be noted that Sandeep can file a Civil Suit on a Competent Court to recover damages. The claim would be for loss suffered due to breach of Warranty and not the ownership of the Car.

30. The Passing or transfer of property constitutes most important element and factor to decide legal rights and liabilities of seller and buyer. The primary rule determining the passing of property from seller to buyer depends on following. Explain after quoting relevant provisions of the Sale of Goods Act, 1930.

(i) Where the goods are ascertained

(ii) Where the goods are unascertained

(6 Marks, PYQ Jan 2026)

Ans. Primary rule determining the passing of property from seller to buyer

(i) Where the goods are Ascertained (Section 19 of the Sale of Goods Act, 1930): Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

[sub-section (1)]

For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. [sub-section (2)]

Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. [sub-section (3)]

Stages of goods while passing of property

(a) Specific goods in a deliverable state

Section 20 of the Act provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Here, condition is goods must be ready for delivery.

(b) Specific goods to be put into a deliverable state.

Section 21 of the Act provides that where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has

notice thereof.

(c) Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

Section 22 of the Act provides that where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

(ii) Where the goods are Unascertained: 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 ascertained. [Section 18]

The rules in respect of passing of property of unascertained goods are as follows:

1. Sale of unascertained goods by Description and Appropriation [Section 23(1)]:

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- a. There is a contract for the sale of unascertained or future goods.
- b. The goods should conform to the description and quality stated in the contract.
- c. The goods must be in a deliverable state.
- d. The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- e. The appropriation must be made by:
 - the seller with the assent of the buyer; or
 - the buyer with the assent of the seller.
- f. The assent may be express or implied.
- g. The assent may be given either before or after appropriation

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

31. Raj is a manufacturer of talcum powder. Vikas purchased a talcum powder from Raj and after using it, he suffered from skin irritation due to a chemical residue available in talcum powder. Vikas plead that Raj is responsible for his suffering. Raj denied his liability on the basis that he was in no way responsible for the bad selection of the buyer (caveat emptor). Examine under the provisions of the Sale of Goods Act, 1930.

(i) Whether Raj would be held responsible?

(ii) Whether your answer would be different if Raj is only a trader of the talcum powder of a popular brand sold in a sealed container if it is a sale by description?

(4 Marks, PYQ Jan 206)

Ans. (a) (i) Whether Raj would be held responsible?

According to Section 16(1) of the Sale of Goods Act, 1930, there is an implied condition that the goods shall be reasonably fit for the purpose for which they are purchased, provided the buyer makes the purpose known to the seller and relies on the seller's skill or judgment.

In the instant case, Raj is the manufacturer. As a manufacturer of talcum powder, there is an implied condition that the product is fit for human skin usage. Since the powder contained a chemical residue that caused skin irritation, it was not of merchantable quality, meaning it was not fit for its ordinary purpose (application to the body).

The chemical residue constitutes a "latent defect" (not discoverable by ordinary inspection), making the product unmerchantable and unfit for use. Therefore, the doctrine of caveat emptor (let the buyer beware) does not apply here because the defect was not discoverable by ordinary inspection, and the seller (as manufacturer) is liable for the fitness of the product.

Raj, the manufacturer of the talcum powder, is responsible for the skin irritation of Vikas. Raj cannot deny liability based on the buyer's selection because the product was not of "merchantable quality," which is an implied condition in sale of goods. Vikas can claim damages from Raj for the skin irritation caused by the defective talcum powder.

- (ii) If Raj is only a Trader:** Section 16(2) of the Sale of Goods Act, 1930 states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods shall be of "merchantable quality". Even if Raj is merely a trader selling a popular brand in a sealed container, the goods must still be merchantable (i.e., fit for use). A product that causes skin irritation due to chemical residue is not of merchantable quality. The seller is liable for latent defects in the goods even if they are sold in a sealed container, as the seller is expected to sell goods that are fit for consumption/use.

Raj is still responsible for selling goods of unmerchantable quality, even if he is just a trader.

Alternate Answer (ii)

One of the exceptions of doctrine of Caveat Emptor is that, in case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].

Here, the buyer is relying on the particular brand name. However, when goods are sold in a sealed container of a reputed brand, the trader does not manufacture the goods and has no control over the contents. Here, Raj is only a trader, not a manufacturer. So, the manufacturer is responsible and not Raj.

- 32. (i) What do you mean by suit for specific performance? State any two conditions when court allows this remedy according to provisions of the Sale of Goods Act, 1930?**

(3 Marks, PYQ Jan 2006)

- (ii) What do you mean by right of resale? State any three conditions when the right of resale**

goods given to an unpaid sellers under the Sale of Goods Act, 1930.

(4 Marks, PYQ Jan 206)

Ans. (i) Suit for Specific Performance (Section 58 of the Sale of Goods Act, 1930): Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

This remedy is allowed by the Court subject to these conditions:

- (a) The contract must be for the sale of specific and ascertained goods.
- (b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.
- (c) It empowers the Court to order specific performance where damages would not be an adequate remedy.
- (d) It will be granted as remedy if goods are of special nature or are unique.

(ii) Right of Re-Sale [Section 54 of the Sale of Goods Act, 1930]: The right of re-sale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) **Where the goods are of a Perishable in Nature:** In such a case, the buyer need not be informed of the intention of resale.
- (ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.
- (iii) **Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods:** The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.
- (iv) **A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale:** Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will re-sell the goods to some other person. In such cases, the seller is said to have reserved his right of re-sale and he may re-sell the goods on buyer's default.
- (v) **Where the property in goods has not passed to the buyer:** The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien". This is the additional right used in case of agreement to sell.



33. (i) X offered to sell Y a machine for ₹ 5,00,000/-. Y refused to buy it unless the machine is made into a running condition. X agreed to do the same but while the machine was being repaired, it was destroyed without the fault of any person. With reference to the relevant provisions of the Sale of Goods Act, 1930 examine whether X can recover the price from

Y?

(4 Marks, PYQ Sep. 2025)

- (ii) For the purpose of making uniforms for the employees, VK bought darkblue coloured cloth from PK. But did not disclose to the PK the purpose of the said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps and boots. Advise VK whether he is entitled to have any remedy, as per the provisions of the Sale of Goods Act, 1930.

(3 Marks, PYQ Sep. 2025)

- Ans.** (i) According to the provisions of the Sale of Goods Act, 1930, in case of 'specific goods', the property shall pass on the formation of contract only if the goods are specific (Section 19). Goods are in a deliverable state i.e. the seller has done all that he is required to do, to put the goods in such a state that the buyer shall be bound to take the delivery of the same (Section 20). If the seller is bound to do something in respect of the goods to put them in a deliverable state and he is not yet done the same, then the possession of goods shall pass on to the buyer in the future, when the seller does what is required to do and brings the same to the knowledge of the buyer. (Section 21).

In the given case, the seller X was required to conduct repairs in respect of the machine before he buys the same. Thus, the possession of property intends to take place when the repairs are conducted by X and Y has the knowledge of the same. Since the machine is destroyed before repairs could be completed, the possession of property has not taken place.

The risk of loss vests with X and therefore cannot recover the price from Y.

ALTERNATE ANSWER

- (a) (i) **Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged that they no longer answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void. In the instant case, the machine was destroyed without the fault of any person while being repaired. X cannot recover the price from Y as the performance of contract became impossible due to supervening impossibility.
- (ii) According to Section 16(1) of the Sale of Goods Act, 1930, normally in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied.

The general rule is that of "Caveat Emptor" that is "let the buyer beware".

But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, VK purchased the dark blue coloured cloth from PK without informing him i.e. uniforms would be prepared and used by employees. Therefore, VK cannot make PK responsible on the ground that cloth was found unfit.

VK cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from PK. In view of the above, VK will not succeed in getting any remedy as per the provisions of the Sale of Goods Act, 1930.



- 34. (i) Ms. S visits an electronic store and asks for a laptop suitable for high-end graphic design work. The salesman recommends a specific model, assuring her that it will meet her needs. Relying on this advice, Ms. S purchases the laptop. However, after using it, she realises that the laptop lacks the necessary processing power and graphics capability for her work. Can Ms. S take legal action against the seller under the Sale of Goods Act, 1930? Justify your answer.**

(3 Marks, PYQ Sep. 2025)

- (ii) Mr. S was going through severe financial hardships. His wife suggested to take a gold loan. On 15th January 2025, he pledged his wife's jewellery worth ₹ 30 lakhs with one of his friend Mr. R and took a loan of ₹ 25 lakhs. On 17th January 2025, he sold total jewellery for ₹ 28 lakhs to M/s RL Jewellers Pitampura. The jeweller purchased it in good faith without knowing the fact that the jewellery was already pledged. After all this, Mr. S declared himself insolvent. When Mr. R came to know about this, he filed a suit against M/s RL Jewellers. But M/s RL Jewellers contended that they were unaware about pledge. With reference to provisions of the Sale of Goods Act, 1930 what is the remedial action available to Mr. R?**

(4 Marks, PYQ Sep. 2025)

Ans. (i) Fitness as to Quality or Use [Section 16 (1) of the Sale of Goods Act, 1930]

According to Section 16(1) of the Sale of Goods Act, 1930 there is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

1. The buyer should have made known to the seller the particular purpose for which goods are required.
2. The buyer should rely on the skill and judgement of the seller.
3. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be used only for one purpose, the buyer need not tell the seller the purpose for which he requires the goods. In the instant case, Ms. S clearly informed the Seller that she needed a laptop for high end graphic design work. The Seller recommended a model, creating an implied condition that it would be suitable for that purpose. The laptop failed to meet the required performance standards, breaching

the implied condition of fitness. Ms. S can take legal action against the seller. The seller breached the implied condition as to fitness for purpose, since the laptop recommended was not suitable for high-end graphic design work.

- (ii) According to Section 30(1) of the Sale of Goods Act, 1930, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier.

A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.

Therefore, in the instant case, RL Jewellers have got good title over the jewellery sold by Mr. S and Mr. R cannot take any action against RL Jewellers. However, Since Mr. S has violated the condition of pledge, he can claim only from the property of Mr. S as he has become insolvent.

(ii) ALTERNATE ANSWER

Condition as to Title [Section 14(a)]: In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that

- (a) in case of a sale, he has a right to sell the goods, and
- (b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.

In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

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

In every agreement of sale, it is an implied condition that the Seller will have a right to sell the goods at the time when the property is to pass. In the above case Mr. S was not real owner as he already pledges the jewellery to Mr. R.

On the other hand, it is implied warranty that the goods will be free from any charge and encumbrance. In above case Mr. S has not disclosed encumbrance to Jewellers and sold jewellery.

Thus, M/s RL Jewellers will not be liable to return the jewellery for which he already paid. Mr. R can file a suit against Mr. S. But here in this situation S declared himself insolvent. So, Mr. R can recover from property of Mr. S only.

35. (i) **MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in**

a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.

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

(4 Marks, PYQ Jan 2025)

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

(3 Marks, PYQ Jan 2025)

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

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

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

Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:

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

- (ii) As per Section 27 of the Sale of Goods Act, 1930, "no one can transfer a better title than they themselves have." This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner. Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

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



36. What are the rights of a buyer, when seller commits a breach of contract under the provisions of the Sale of Goods Act, 1930?

(3 Marks, PYQ Jan 2025)

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

- 1. Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non- delivery.
- 2. Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
This remedy is allowed by the court subject to these conditions:
 - (a) The contract must be for the sale of specific and ascertained goods.
 - (b) The power of the court to order specific performance is subject to provisions of the Specific Relief Act of 1963.
 - (c) It empowers the court to order specific performance where damages would not be an adequate remedy.
 - (d) It will be granted as remedy if goods are of special nature or are unique.
- 3. Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
- 4. Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
- 5. Suit for interest:**
 - (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
 - (2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit filed by him for the refund of the price (in a case of a breach of the contract on the part of the seller) from the date on which the payment was made.



37. M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by

misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.

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

(4 Marks, PYQ, SEP 2024)

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

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

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

ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

ALTERNATE ANSWER TO SECOND PART

Section 13 of the Sale of the Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

According to above stated provision, there is a breach of condition, and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the entire quantity to fulfil his other contracts with other parties and claim damages.

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

Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it. However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound

by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930.

(3 Marks, PYQ, SEP 2024)

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

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

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

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



- 39. Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok.**

(4 Marks, PYQ, SEP 2024)

Ans. As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer when he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Camera) passes to Mangesh.

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

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

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

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

- 40. Ansari of Jaipur sold 100 smart TV set @ ₹ 50,000/- per set to Baburam of Delhi. He delivered**

the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ₹ 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.

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

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

(B) Whether Baburam can claim loss suffered due to nondelivery from Ansari?

(3 Marks, PYQ, SEP 2024)

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

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

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

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

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

(3 Marks, PYQ, SEP 2024)

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

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

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

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

MTP (The Sale of Goods Act, 1930)

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

to do the valuation. Kusum refused to do valuation.

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

Advise, referring to the provisions of the Sale of Goods Act, 1930.

(3 Marks, MTP Jan 2026 S-2)

Ans. The Sale of Goods Act, 1930

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

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

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

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

44. With reference to provisions of the Sale of Goods Act, 1930, answer the following:

- (i) What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.**
- (ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer losses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition.**

(7 Marks, MTP Jan 2026 S-2)

Ans. The Sale of Goods Act, 1930

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

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

- (ii) Section 13 of the Sale of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.



45.

P sold certain antique items to Q for ₹ 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment.

Q transferred a sum of ₹ 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency.

By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods.

According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only ₹ 20,000/- was left to be paid?

(4 Marks, MTP Sep 2025 S-1)

Ans. The Sale of Goods Act, 1930

Rights of lien (Section 47 of the Sale of Goods Act, 1930) An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.

Exercise of right of lien: This right can be exercised by him in the following cases only:

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

In the instant case, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024.

Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ₹ 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

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

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

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce "you are the highest bidder".

Therefore, L's claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.



46.

An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest bidder".

During the auction, L bids for an antique sculpture, worth ₹ 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees. Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930.

(3 Marks, MTP Sep 2025 S-1)

Ans. The Sale of Goods Act, 1930

Separate Legal Entity: There are distinctive features between different forms of organisations and the most striking feature in the company form of organisation vis-à-vis the other forms of business organisations is that it acquires a unique character of being a separate legal entity. In other words, when a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

- (a) It is at law, a person which is different from the subscribers to the memorandum of association. It's personality is distinct and separate from the personality of those who compose it.
- (b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.

A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets.

The shareholders are not the private or joint owners of the company's property.

A member does not even have an insurable interest in the property of the company. The leading case on this point is of *Macaura Vs. Northern Assurance Co. Limited* (1925):

Fact of the case

Macaura (M) was the holder of nearly all (except one) shares of a timber company. He was also a major creditor of the company. M insured the company's timber in his own name. The timber was lost in a fire. M claimed insurance compensation. Held, the insurance company was not liable to him as no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in them.

Hence in this case, since the timber was not insured in the company's name, M could not claim the compensation from insurance company.

(ii) Perpetual Succession: Members may die or change, but the company goes on till it is wound up on the grounds specified by the Act. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

- 47. A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price.**

Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930.

(3 Marks, MTP Sep 2025 S-1)

Ans. The Sale of Goods Act, 1930

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

Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller. In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.

- 48. Anant needs an air conditioner for his room. For this purpose, he approaches M/s Frontline Electronics. The sales manager of M/s Frontline Electronics said that its technician will visit the room of Anant and there after they will suggest the air conditioner suitable for his room. After visiting the room, the technician suggests that a split AC of 1 tonne capacity will be sufficient for his room. On this advice, he purchases the suggested AC but after sometimes Anant found that AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it. Referring to the provisions of the Sale of Goods Act, 1930, whether Anant can avoid the contract after installation?**

(7 Marks, MTP Sep 2025 S-2)

Ans. The Sale of Goods Act, 1930.

According to Section 16(1) of the Sale of Goods Act, 1930, there is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer

wants them, provided the following conditions are fulfilled:

- (a) The buyer should have made known to the seller the particular purpose for which goods are required.
- (b) The buyer should rely on the skill and judgement of the seller.
- (c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, Anant approaches M/s Frontline Electronics for purchasing an AC. The technician of M/s Frontline Electronics visits the room of Anant where AC to be installed and on the suggestion of M/s Frontline Electronics a split AC of 1 tonne capacity is installed. But AC is insufficient to cool the room area. Now, Anant wants to avoid the contract, but M/s Frontline Electronics denies returning or changing the AC as AC is installed and returning or changing will result a heavy loss to it.

On the basis of above provisions and facts, undoubtedly Anant purchases AC only on the suggestion of M/s Frontline Electronics. AC is not fit and suitable for the room area of Anant, hence he can avoid the contract.



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

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

(7 Marks, MTP, May 2025 S-1)

- Ans. (i) Effect of part delivery (Section 34 of the Sale of Goods Act, 1930):** A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.
- (ii) Place of delivery [Section 36(1)]:** Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract,
- ◆ goods sold are to be delivered at the place at which they are at the time of the sale, and
 - ◆ goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or
 - ◆ if goods are not then in existence, at the place at which they are manufactured or produced.
- (iii) Delivery of wrong quantity [Section 37]:** Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]
- Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]
- Where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a

different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole. [Sub-section (3)]

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

- 50. Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. The company informed that tins would be packed in the boxes each containing 50 tins. On delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part of the contract. Amjuice Ltd. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930?**

(7 Marks, MTP, May 2025 S-1)

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

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

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

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



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

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

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

(7 Marks, MTP, May 2025 S-1)

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

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

(B) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

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

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

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

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

(4 Marks, PYQ May 2025)

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

(3 Marks, PYQ May 2025)

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

In the instant case, the Institute of Science and Technology, Dehradun placed an order for

various chemicals worth ₹ 1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science and Technology, Dehradun (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

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

There are two requirements for this condition to apply:

- (a) Goods should be bought by description.
- (b) The seller should be a dealer in goods of that description.

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

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

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.

Therefore, Sidharth can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.



53. **Explain the concept of the "Right of Re-sale" under the Sale of Goods Act, 1930. Under what circumstances can an unpaid seller exercise this right?**

(7 Marks, PYQ May 2025)

Ans. Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) **Where the goods are of a perishable nature:** In such a case, the buyer need not be informed of the intention of resale.
- (ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt

of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

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

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

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

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

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

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

54. Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. (7 Marks)

Ans. The main points of distinction between the 'Sale' and 'Hire- Purchase' are as follows:

Sr. No.	Basis of difference	Sale	Hire-Purchase
1	Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last installment.
2	Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment.

3	Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4	Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
5	Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
6	Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

55. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (4 Marks, MTP Jan 2025 S-2)

Ans. Right of stoppage of goods in transit: The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (A) The seller must be unpaid
- (B) He must have parted with the possession of goods
- (C) The goods must be in transit
- (D) The buyer must have become insolvent
- (E) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

56. Mr. Manoj was running a shop selling good quality washing machines. Mr. Vivek came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Manoj showed him a particular machine which Mr. Vivek liked and paid for it. Later on, when the machine was delivered to Mr. Vivek's house, it was found that it was the wrong

machine and also unfit for washing woollen clothes. He immediately informed Mr. Manoj about the delivery of the wrong machine. Mr. Manoj refused to exchange the same, saying that the contract was complete after the delivery of the washing machine and payment of price. With reference to the provisions of the Sale of Goods Act, 1930, discuss whether Mr. Manoj is right in refusing to exchange the washing machine.

(7 Marks, MTP Sept. 2024 S-1)

Ans. According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to a sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Vivek informed Mr. Manoj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Manoj was unfit for the purpose for which Mr. Vivek wanted the machine.

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vivek can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Manoj to replace the washing machine with desired one.

57. Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930.

(4 Marks, MTP Sept. 2024 S-2)

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

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

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

In this case, M received the goods by sample from L but since the goods were not according to the sample, M can reject the goods and can sue L.

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

58. Classify the following transactions under the Sale of Goods Act, 1930 according to the types of goods they are:

(A) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.

(B) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.

(C) T agrees to sell to S all the apples which will be produced in his garden this year.

(3 Marks, MTP Sept. 2024 S-2)

- Ans.** (A) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- (B) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.
- (C) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

59. Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930.

(7 Marks, MTP Sept. 2024 S-2)

Ans. In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

- (1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

Mercantile Agent means an agent having in the customary course of business as such agent has authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

- (2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
- (3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
- (4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title

to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [Section 30(1)].

(5) Sale by buyer obtaining possession before the property in the goods has vested in him:

Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

(6) Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell goods.

(7) Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].

(8) Sale under the provisions of other Acts:

- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
- (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- (iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

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The Indian Partnership Act, 1932

RTP (The Indian Partnership Act, 1932)

1. **Mr. Arun and Mr. Varun are brothers employed in a private company in Delhi. Out of their joint savings, they purchased a plot of land in Noida and constructed five commercial shops on it. These shops were later rented out to different tenants. It was mutually agreed that both would equally share the monthly rent received. They also decided to contribute jointly towards property tax and repair expenses.**

In March 2025, one tenant defaulted in paying rent of ₹50,000. Varun claimed the entire arrears from Arun, stating that both were “partners” in the property business and, hence, Arun, being one of the partners, was liable for the whole amount. Arun, however, refused and argued that they were not partners but only co-owners; therefore, he was not liable to pay Varun’s share of the defaulted rent.

Decide, with reasons, whether Arun and Varun can be regarded as partners under the Indian Partnership Act, 1932.

(RTP May 2026)

Ans. According to Section 4, Section 5 and Section 6 of the Indian Partnership Act, 1932 –

- Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- The following essentials must exist to constitute a partnership:
 - o There must be an agreement between the parties;
 - o The agreement must be to carry on a business;
 - o The agreement must be to share profits of such business; and
 - o The business must be carried on by all or any of them acting for all (mutual agency).
- Partnership arises from contract and not from status.
- The real relation between the parties, as shown by all relevant facts, determines whether a partnership exists.
- In contrast, co-ownership arises by inheritance or purchase and does not necessarily involve business or mutual agency.

In the present case, Arun and Varun, while working in jobs, purchased a piece of land with their joint savings. They built shops on it and rented them out, dividing the rental income equally. When a tenant defaulted on paying ₹50,000, Varun demanded the entire amount from Arun, treating them as “partners.” Arun denied this, claiming they were only co-owners of the property and not partners in any business. On applying the above provisions, it is clear that Arun and Varun are only co-owners and not partners. They never entered into an agreement to carry on a business with a profit motive; they simply invested in property and shared rental income. There is no element of business activity or mutual agency between them.

Therefore, under the Indian Partnership Act, 1932, they cannot be regarded as partners. Arun

is liable only for his individual share of the defaulted rent and not for the whole amount.



2. **M, N, and O were partners in a firm engaged in the transport business. Over time, N became mentally unsound and was incapable of managing the firm's affairs. O alleged that M was continuously guilty of misconduct and was misappropriating the firm's funds. Due to repeated disputes and loss of trust, O filed a petition in Court seeking dissolution of the firm. After the court ordered dissolution, M claimed that he still had the right to use the firm's trucks and vehicles for his personal business. Explain whether contention of M is correct.**

(RTP May 2026)

Ans. According to Section 44 of the Indian Partnership Act, 1932, the Court may dissolve a firm on several grounds, including when a partner becomes of unsound mind, when a partner is guilty of misconduct affecting business, when partners commit persistent breaches of the partnership agreement, or when it becomes just and equitable to dissolve the firm.

Further, Section 46 provides that on dissolution of a firm, every partner or his representative is entitled to have the firm's property applied in payment of debts and liabilities of the firm, and the surplus distributed among partners according to their rights. No partner can claim exclusive rights over the property of the firm after dissolution. Here, N became mentally unsound and incapable of attending to partnership matters. O alleged that M was guilty of misconduct and misappropriation of funds. Due to loss of confidence and ongoing disputes, O approached the court for dissolution of the firm. The court ordered the dissolution. Subsequently, M claimed personal rights over the firm's assets, particularly its vehicles, for his individual use.

In the instant case, the dissolution ordered by the court was valid under Section 44, as one partner was of unsound mind and another was guilty of misconduct. After dissolution, under Section 46, the firm's assets must be used for clearing liabilities and then distributed among partners according to their share. M cannot claim exclusive rights over trucks and vehicles for personal business. His claim is unjustified, and the property must be applied for settlement of accounts of the dissolved firm.

3. **Explain the rights of a transferee of a partner's interest under the Indian Partnership Act, 1932. How do these rights differ from those of an original partner?**

(RTP May 2026)

Ans. Rights of Transferee of a Partner's interest (Section 29 of the Indian Partnership Act, 1932)

A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

(I) During the continuance of partnership, such transferee is not entitled:

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

- (II) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
- to receive the share of the assets of the firm to which the transferring partner was entitled, and
 - for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, which we will discuss hereinafter, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

4. A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.



- A filed a suit against B who had stolen the goods of the firm.
 - A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.
 - M filed a suit against the firm M/s ABC & Associates for the recovery of ₹ 10,000/- dues from the firm. M also owed ₹ 4,000/- to the firm. The firm claimed a set off of ₹ 4,000/-.
- (RTP Jan 2026)**

Ans. (i) A filed a suit against B who had stolen the goods of the firm:

The said suit by A is Maintainable.

Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.

Hence the suit filed against B for the theft of the goods of the firm, is maintainable.

(ii) A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution

The said suit by A is Maintainable.

Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim is valid as the shares are the assets of the dissolved firm and A can claim it even if the firm is unregistered.

(iii) M filed a suit against the firm for recovery of ₹10,000/- dues. M also owed ₹ 4,000/-.

The firm claimed a set-off.

The said suit by M is Maintainable

Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

Here, M filed a suit against the firm for the recovery of ₹ 10,000 dues from the firm. M also owed ₹ 4,000/- to the firm.

The firm cannot set-off the claim of ₹4,000/- as it is more than ₹ 100/. Nevertheless, M is entitled for recovery of ₹ 10,000 from firm.

5. M/s LMP & Associates, a partnership firm engaged in carpet manufacturing and exporting, was initially managed by senior partners L, M, and P. On 25th August, 2022, the firm admitted Mr. G, an expert in carpet manufacturing, as a partner. However, on 10th January, 2024,

Mr. G was accused of unauthorized activities and subsequently expelled from the partnership with the unanimous approval of the remaining partners.

With reference to the provisions of the Indian Partnership Act, 1932, answer each of the following:

- (i) Examine whether action by the partners was justified or not?**
- (ii) What are the factors which should be kept in mind prior to expelling a partner from the firm by other partners?**

(RTP Jan 2026)

Ans. (i) Whether action by the Partners was Justified?

Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932): A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

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

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

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

(ii) Factors to be kept in mind before expelling a Partner

The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

- (a) the power of expulsion must have existed in a contract between the partners;
- (b) the power has been exercised by a majority of the partners; and

- (c) it has been exercised in good faith.

6. Describe the following kinds of partnership with reference to the Indian Partnership Act, 1932:

- (a) Partnership at will**
- (b) Partnership for a fixed period**
- (c) Particular partnership**
- (d) General partnership.**

(RTP Jan 2026)

Ans. The various kinds of partnership are as follows:

- (a) Partnership at will according to Section 7 of the Act, partnership at will is a partnership when:
1. no fixed period has been agreed upon for the duration of the partnership; and
 2. There is no provision made as to the determination of the partnership.

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

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

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

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

- (c) Particular partnership:** A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

- (d) General partnership:** Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership. In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of general partnership. General partnership is different from limited liability partnership.

7. **A and B are partners in M/s Aee Bee & Company. Firm is doing business of trading of plastic bottles. A is authorised to sell the stock of plastic bottles. It was decided between them that A should sell the plastic bottles at the minimum price which they have decided and if A sell at a price less than minimum price, he should first take the permission of B. Due to sudden change in government policy, the price of plastic bottles was continuously declining. To save the loss of firm, A sold the stock at lower price. Meanwhile, A tried to contact B but couldn't do so as B was on foreign trip. Afterwards when B came, he filed the suit to recover the difference of sale price and minimum price to the firm. Whether B can do so under the provisions of the Indian Partnership Act, 1932?**

(RTP SEP 2025)

Ans. According to Section 13(e) of the Indian Partnership Act, 1932, every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

M/s Aee Bee & Company is doing business of trading of plastic bottles. A and B, partners of the firm, authorised A to sell the stock of plastic bottles on the condition to sale at the minimum price. In case A has to sell at a price less than the minimum price, he should first take the permission of B. Due to some emergency, A sold the stock at lower price to save the firm from loss. A couldn't contact B as he was on foreign trip. B filed the suit to recover the difference of sale price and minimum price to the firm.

On the basis of the above provisions and facts of the problem given, selling by A at a lower price was to save the firm from loss. As the act of A was in favour of firm, he was not liable to bear the loss.

8. **Can a partner be expelled? If so, how? Which factors should be kept in mind prior to expelling a partner from the firm by the other partners according to the provision of the Indian Partnership Act, 1932?**

(RTP SEP 2025)

Ans. Expulsion of partner and factors to be kept in mind:

As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm and shall be null and void.

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

- (i) The expulsion must be in the interest of the partnership
- (ii) The partner to be expelled is served with a notice
- (iii) He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.



9. (i) **Mr. Ram and Mr. Raheem are working as teachers in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹ 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2025. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹ 2800 and ₹ 200 as a penalty to resume the electricity connection. Mr. John claimed ₹ 3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹ 1500.**
- Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partners. Comment in the light of the relevant legal provision of the Indian Partnership Act, 1932, the legal position and the correctness of the liability of Mr. Ram to pay whole amount of ₹ 3000 to Mr. John?**
- (ii) **Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.**

(RTP SEP 2025)

Ans. (i) According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved that:

1. There must be an agreement between all the persons concerned;
2. The agreement must be to carry on some business;
3. The agreement must be to share the profits of a business and
4. The business was carried on by all or any of them acting for all.

On the basis of the above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly.

By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim the rest of ₹ 1500 from Mr. Raheem.

- (ii) **Liability of Firm for Misapplication by Partners (Section 27 of the Indian Partnership Act, 1932):**

The two clauses of Section 27 bring out an important point of distinction between the two categories of cases of misapplication of money by partners.

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

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

The firm would be liable in both cases.

10. (i) **P, Q and R formed a partnership agreement to operate motor buses along specific routes for a duration of 12 years. After operating the business for four years, it was observed that the business incurred losses each year. Despite this, P is determined to continue the business for the remaining Period. Examine with reference to the Indian Partnership Act, 1932, can P insist to continue the business? If so, what options are available to Q and R who are not wanting to continue operating the business?**
- (ii) **A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Later A comes to know of the fact of B's conduct on the transaction with C. So he decided to avoid his liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C. Comment upon the decision of A in the said transaction.**

(RTP SEP 2025)

- Ans. (i)** Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made. Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are not wanting to continue operating of the business due to continuous losses.

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

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

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

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

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

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

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

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

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

(RTP May 2025)

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

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

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

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

(RTP May 2025)

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

Basis of difference	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.

2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

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

- (i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?
 - (ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y?
 - (iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?
- (RTP May 2025)**

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

Yes, it is a case of partnership

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

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

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

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

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

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

(RTP May 2025)



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

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

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

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

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

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

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

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

- 15. (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?**
- (ii) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?**
- (iii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?**
- (RTP Jan 2025)**

Ans. Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

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

- (iii) **Goodwill:** The term “Goodwill” has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

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

(RTP Jan 2025)

Ans. Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. ‘Contract between the partners’ means a contract already made. Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also). In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

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

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

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

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

(RTP Jan 2025)

Ans. Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are

competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

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

(RTP Jan 2025)

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

Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

In the instant case, since Gopal allowed himself to be represented as a partner to the RS & Co. and third parties acted based on this belief and therefore, Gopal is held liable to Sundar as he represented himself by his act to be a partner to the RS & Co. However, Gopal is not liable to Madhav for the liabilities incurred by the firm. Information of Gopal being a partner to the firm was shared by the Sundar (Supplier to the firm) which is not falling within the ambit of doctrine of holding out.

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

PYQ (The Indian Partnership Act, 1932)

- 19. In accordance with provisions of the Indian Partnership Act, 1932, explain the following:**

- (i) The rights of an outgoing partner to carry on competing business.**
- (ii) The rights of a partner to be indemnified by the firm and the liability of a partner to indemnify the firm.**

(6 Marks, PYQ, May 2025)

Ans. (i) Rights of outgoing partner to carry on competing Business (Section 36 of the Indian Partnership Act, 1932)

An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-

- (a) use the firm name,
- (b) represent himself as carrying on the business of the firm or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade- A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

- (ii) **Right of the partners to be indemnified by the firm [Section 13(e)]:** Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

Liability of partner to indemnify the firm [Section 13(f)]: A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

20. **ABC & Co. is a renowned partnership firm doing business in textile industry from last twenty years. But due to technical up-gradation, firm incurred heavy debts of ₹ 50 lakhs. To maintain the integrity of the firm they introduced Mr. D, as a new partner. Before admission of D, other partners A, B, and C decided on their own and made an agreement with the creditors that the new partner will be liable for existing debt through novation. When D joins, he came to know about the debt of ₹ 50 lakhs. With reference to the provisions of the Indian Partnership Act, 1932, give your opinion:**

- (i) **Whether D would be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors?**
 (ii) **Whether your answer will be different if D was minor at the time of admission?**
 (iii) **Whether D would be liable to pay the debt upon becoming major?**

(7 Marks, PYQ, May 2025)

Ans. (i) Liability of D: As per section 31 of the Indian Partnership Act, 1932, the liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date. The new firm, including the new partner who joins it, may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners. The creditor's consent is necessary in every case to make the transaction operative. The mere agreement amongst partners cannot operate as Novation. Thus, an agreement between the partners and the incoming partner that he shall be liable for existing debts will not ipso facto give creditors of the firm any right against him.

In the instant case, D would not be liable for the debts of the firm incurred prior to his admission by virtue of the agreement between A, B, C and the creditors.

- (ii) **If D was minor at the time of admission:** As per section 30, the liability of the minor is confined only to the extent of his share in the profits and the property of the firm. Minor has no personal liability for the debts of the firm incurred during his minority.

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

Hence, D would not be liable in this case also.

(iii) Liability of D upon becoming major: A minor partner on attaining majority becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

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

Hence, D would not be liable to pay the existing debt upon becoming major.

21. "The partner indeed virtually embraces the character of both a principal and an agent. The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of Partnership." Explain with reference to provisions of the Indian Partnership Act, 1932.

(7 Marks)

Ans. The partner indeed virtually embraces the character of both a principal and an agent.

As per Section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purpose of the business of the firm. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent.

The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either.

The implied authority of a partner to bind the firm by all acts done by him in all matters connected with business is done in the usual way, not beyond the nature and scope of partnership.

Sections 19(1) and 22 deal with the implied authority of a partner. The impact of these Sections is that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm binds the firm, provided that the act is done in the firm name, or any manner expressing or implying an intention to bind the firm. Such an authority of a partner to bind the firm is called his implied authority. It is however subject to the following restrictions:

1. The act done must relate to the usual business of the firm, that is, the act done by the partner must be within the scope of his authority and related to the normal business of the firm.
2. The act is such as is done for normal conduct of business of the firm. The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
3. The act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

Thus, a partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

22. Explain with reference to provisions of the Indian Partnership Act, 1932.

(i) Whether a partner can be introduced without consent of other partners?

If yes describe the procedure. If no, in what manner a partner can transfer his share in partnership?

(ii) Describe the rights of transferee: -

(1) During the continuance of partnership.

(2) On the dissolution of the firm.

(4 Marks, PYQ Jan 2026)

Ans. (i) Whether a Partner can be introduced without the consent of other Partners?

No. By virtue of provisions of Section 31 of the Indian Partnership Act, 1932, no person can be introduced as a partner in a firm without the consent of all the existing partners.

In what manner a Partner can transfer his share in Partnership?

As per Section 31 of the Indian Partnership Act, 1932, no person can be introduced as a partner in a firm without the consent of all the existing partners unless specified as per the partnership agreement. A partner cannot, by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner.

However, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

(ii) (1) Rights of a Transferee during the continuance of Partnership [Section 29(1)]:

During the continuance of partnership, such transferee is not entitled:

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

(2) The rights of such a transferee on the dissolution of the firm are as follows [Section 29(2)]:

On the dissolution of the firm, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

23. (i) Ramesh is a supplier of fruits and vegetables in Azadpur Mandi, Delhi. To expand its business, he invited Suresh and Mahesh (his college friends) to invest in his business. Suresh and Mahesh were agreed but they put a condition that they will share profit in the ratio of 33.33% each or Interest @ 12% p.a. on the capital (which they will bring) whichever is higher but they will not share losses if occurred in any year. Ramesh agreed for this association and made an agreement for partnership. Advise, whether this

association will be treated as partnership according to the provisions of the Indian Partnership Act, 1932?

(3 Marks, PYQ Jan 206)

- (ii) Manak was working as a construction contractor from several years. He engaged Roop Sing a labour and material contractor for procurement of raw material and labour for construction site. All the expenses pertaining to raw material, Labour wages will be borne by Manak. Manak agreed to give Roop Singh 5% of the contract amount for procurement. Whether this arrangement will be termed as partnership? Explain according to provisions of the Indian Partnership Act, 1932?

(iii Marks, PYQ Jan 206)

- (iii) Shantanu was running business of ABC Travel Agency from several years. He purchased 10 cars amounting to ₹100 lakh for the purpose of running them on hire. He borrowed ₹50 lakhs for this purpose from Shankar. Shankar proposed that he will take 25% of profit share. He has nothing to do with business. Shantanu agreed for this proposal. After some time, Shankar told his friends that he is partner in ABC Travel Agency. Shantanu denied the fact. He contended that he is sharing in profit only, not a partner in his travel agency. Advice with reference to the provisions of the Indian Partnership Act, 1932 whether this arrangement between the Shantanu and Shankar will be treated as partnership?

(2 Marks, PYQ Jan 206)

Ans. (i) Whether the Association will be treated as Partnership?

Section 4 of the Indian Partnership Act, 1932 states that "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The sharing of profits of a business is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential requirement. It is open to one or more partners to agree to share all the losses. Yes, it is a case of partnership. The association between the partners, Ramesh and Suresh will be treated as partnership according to the provisions of the Indian Partnership Act, 1932, as there was a partnership agreement according to which they decided to share in profit only.

Alternate Answer to 3(a)(i)

No, it is not a case of partnership due to lack of the mutual agency which is conclusive evidence of partnership. Mutual agency includes that all partners are jointly and severally liable for the partnership's debts and obligations, even if they didn't directly participate in the specific transaction.

- (ii) As per the Indian Partnership Act, 1932, "Partnership" is the relation between persons who

have agreed to share the profits of a business carried on by all or any of them acting for all (mutual agency). In the given case, there was no agreement to share profit of the business. Manak was incurring all the expenses relating to the construction and Roop Singh is merely acting as an agent of Manak as he was receiving 5% of the contract value. Therefore, this arrangement will not be termed as partnership.

(iii) According to Section 6 of the Indian Partnership Act, 1932 in determining whether a group of persons is or is not a partnership firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. For determining the existence of partnership, it must be proved that:

- (a) There was an agreement between all the partners concerned;
- (b) The agreement was to share the profits of a business and
- (c) The business was carried on by all or any of them acting for all.

Sharing of profit, which is prima facie evidence, exists but mutual agency among Shantanu and Shankar, which is an essential element, does not exist here as Shantanu borrowed ₹ 50 Lakhs for his business from Shankar for which will take 25% of profit share.

In the absence of mutual agency, the most essential element of partnership, the arrangement between Shantanu and Shankar cannot be treated as a partnership under the Indian Partnership Act, 1932.

24. (i) Describe any four mutual rights and liabilities of partners in a partnership firm with reference to the provisions of the Indian Partnership Act, 1932.

(4 Marks, PYQ Jan 2026)

(ii) Describe any three grounds on which the Court may dissolve a partnership firm with reference to the provisions of the Indian Partnership Act, 1932.

(3 Marks, PYQ Jan 2026)

Ans. (i) Mutual rights and liabilities of Partners (Section 13 of the Indian Partnership Act, 1932):

Subject to contract between the partners, they are entitled to:

Right to Remuneration [Section 13(a)]: No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.

Right to Share Profits [Section 13(b)]: Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm. The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners. If there is no agreement then you should make a presumption of equality and the burden of proving that the shares are unequal, will lie on the party alleging the same.

Interest on Capital [Section 13(c)]: The following elements must be there before a partner

can be entitled to interest on moneys brought by him in the partnership business: (i) an express agreement to that effect, or practice of the particular partnership or (ii) any trade custom to that effect; or (iii) a statutory provision which entitles him to such interest.

Interest on Advances [Section 13(d)]: If a partner makes an advance to the firm in addition to the amount of capital to be contributed by him, in such a case, the partner is entitled to claim interest thereon @ 6% per annum. While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

Right to be Indemnified [Section 13(e)]: Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss, if the payments, liability and act are such as a prudent man would make, incur or perform in his own case, under similar circumstances.

Right to indemnify the firm [Section 13(f)]: A partner must indemnify the firm for any loss caused to it by willful neglect in the conduct of the business of the firm.

(ii) Dissolution by the Court: According to Section 44 of the Indian Partnership Act, 1932 the Court may, at the suit of the partner, dissolve a firm on any of the following grounds: Insanity/Unsound Mind: Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

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

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

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

- Embezzlement
- Keeping erroneous accounts
- Holding more cash than allowed

- Refusal to show accounts despite repeated request etc.

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

Continuous/ Perpetual Losses: Where the business of the firm cannot be carried on, except at a loss in future, the court may order for its dissolution.

Just and Equitable Grounds: Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm.

The following are the cases for the just and equitable grounds:

- Deadlock in the management.
- Where the partners are not in talking terms between them.
- Loss of substratum.
- Gambling by a partner on a stock exchange.

25. A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.

- (i) A filed a suit against B who had stolen the goods of the firm.
- (ii) A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.
- (iii) M filed a suit against the firm M/s ABC & Associates for the recovery of ₹ 10,000/- dues from the firm. M also owed ₹ 4,000/- to the firm. The firm claimed a set off of ₹ 4,000/-.

(6 Marks, PYQ Sep. 2025)

Ans. (i) A filed a suit against B who had stolen the goods of the firm:

The said suit by A is Maintainable.

Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.

Hence, the suit filed against B for the theft of the goods of the firm is maintainable.

- (ii) A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution. The said suit by A is Maintainable. Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim is valid as the shares are the assets of the dissolved firm and A can claim it even if the firm is unregistered.

- (iii) M filed a suit against the firm for recovery of ₹10,000/- dues. M also owed ₹4,000/-. The

firm claimed a set-off. The said suit by M is Maintainable Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract. Here, M filed a suit against the firm for the recovery of ₹10,000 dues from the firm. M also owed ₹4,000/- to the firm.

The firm cannot set-off the claim of ₹4,000/- as it is more than ₹100/. – Nevertheless, M is entitled for recovery of ₹10,000 from firm.

26. **M/s M&M Associates was registered in 1985 by its three partners namely Mr. X, Mr. Y and Mr. Z as the partnership at will. On 5th January 2022, Mr. X, being a very senior partner of age 75 years decided to retire and transfer his shares in the firm to his grandson Mr. S, who was 17 years old at the time of the transfer. Mr. Y and Mr. Z were not interested but when they came to know that Mr. S is a minor, they agreed to admit Mr. S as partner. On 5th October, 2023 at the time of inspection of books and accounts, Mr. S noticed that the books of accounts were displaying only a small amount as profit despite a huge turnover. When, he asked other partners about this fact, then Mr. Y told him that one of the major clients, Mr. T refused to pay huge amount of fees. Mr. S decided to sue Mr. T for recovery of fees and sent a notice for the same. Mr. T argued that Mr. S cannot sue him because he has not given notice of remaining a partner on attaining majority.**

With reference to provisions of the Indian Partnership Act, 1932 decide:

- (i) Whether Mr. X can retire and introduce Mr. S (minor) as a partner?**
- (ii) Whether Mr. S has right to inspect books of accounts?**
- (iii) Whether Mr. S has authority to sue Mr. T, on non-payment of fees?**

(7 Marks, PYQ Sep. 2025)

- Ans.** (i) As per the provisions of Section 32 of the Indian Partnership Act, 1932, (the Act) a partner may retire:
- (a) with the consent of all the other partners;
 - (b) in accordance with an express agreement by the partners; or
 - (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

However, a minor cannot be admitted as a partner in a firm. A minor can only be admitted to the benefits of partnership with the consent of all partners.

As the partnership is at will, Mr. X can retire from the firm by giving notice in writing to all the other partners of his intention to retire and Mr. S, being a minor, can only be admitted to the benefits of partnership under Section 30 of the Act with the consent of all the existing partners.

- (ii) Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of the partnership, whichever is later, the minor partner has to decide

whether he shall remain as a partner or leave the firm.

If he has elected not to become a partner, he may give a public notice in this regard and failure to do so, he shall become a partner in the firm after the expiry of the said 6 months. As Mr. S failed to give the public notice whether he elected to become or not to become a partner of the firm, after expiry of 6 months from obtaining the majority, he will become the partner of the firm.

As per Section 12(d) of the Indian Partnership Act, 1932, every partner has the right to access and to inspect and to copy any of the books of the firm.

Therefore, Mr. S, in the given case, in the capacity of the being a partner by 5th of October, 2023, have right to inspect the books of accounts. The right, must, however, be exercise Bonafide.

- (iii) According to Section 69 of the Act, the firm or any other person on its behalf cannot bring an action against a third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

In view of the above provisions of law, since Mr. S is now a member of the Registered Firm, he has the authority to sue Mr. T for non-payment of fees.

(iii) ALTERNATE ANSWER:

Within 6 months of attaining majority or on obtaining knowledge that a minor partner had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.

Where he has elected not to become partner, he may give public notice that he has elected not to become partner, and such notice shall determine his position with regard to the firm.

If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months. As Mr. S became major on 5th January 2023 and after six months i.e. 5th July 2023, he shall become a partner in the firm as he has not given notice of not becoming a partner.

Therefore, Mr. S has authority to sue Mr. T on non-payment of fee as no notice is required for remaining as a partner on attaining majority.

27. (i) **M/s SR Enterprises is a well-known trading firm. Mr. AM, a former partner of the firm, had retired in 2022 but never made any public announcement about his retirement. In 2024, Mr. R, a supplier, entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm. He relied on Mr. AM's past association with the firm and extended a credit line to the firm. When M/s SR Enterprises defaulted on payment, Mr. R, demanded that Mr. AM also be held liable for the dues.**

Mr. AM refused, stating that he was no longer a partner in the firm and had no involvement in the firm's affairs for long time. Examine with reference to the provisions of the Indian Partnership Act, 1932 whether Mr. AM can be held liable for the firm's above debt.

(3 Marks, PYQ Sep. 2025)

- (ii) M/s LMP & Associates, a partnership firm engaged in carpet manufacturing and exporting, was initially managed by senior partners L, M, and P. On 25th August, 2022, the firm admitted Mr. G, an expert in carpet manufacturing, as a partner. However, on 10th January, 2024, Mr. G was accused of unauthorized activities and subsequently expelled from the partnership with the unanimous approval of the remaining partners.

With reference to the provisions of the Indian Partnership Act, 1932, answer each of the following:

- (1) Examine whether action by the partners was justified or not?
- (2) What are the factors which should be kept in mind prior to expelling a partner from the firm by other partners?

(4 Marks, PYQ Sep. 2025)

Ans. (i) **Retirement of a Partner (Section 32 of the Indian Partnership Act, 1932):** A partner may retire:

- (a) with the consent of all the other partners;
- (b) in accordance with an express agreement by the partners; or
- (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

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

In the instant case, Mr. AM can be held liable for the firm's debt as no public notice was given of his retirement and Mr. R entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm.

(i) **ALTERNATE ANSWER:**

Partner by Holding Out (Section 28):

Partnership by holding out is also known as partnership by estoppel. When a person represents himself, or knowingly permits himself, to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to anyone who on the faith of such representation has given credit to the firm. The Rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, gives credit to the firm on the belief that he was a partner, will be entitled to hold him liable. In the instant case, Mr. AM, despite

retiring, did not publicly notify his disassociation from the firm. Since, Mr. R, the supplier, believed in good faith that Mr. AM was still a partner and extended credit based on this assumption, Mr. AM can be held liable as a “Partner by holding out”.

(ii) (1) Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932): A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

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

(2) Factors to be kept in mind before expelling a Partner

The following are the factors to be kept in mind prior to the expelling of a partner from the firm by other partners:

- (a) the power of expulsion must have existed in a contract between the partners;
- (b) the power has been exercised by a majority of the partners; and
- (c) it has been exercised in good faith.

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

(6 Marks, PYQ Jan 2025)

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

(1) Rights:

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

(2) Liabilities:

Before attaining majority:

- (a) The liability of the minor is confined only to the extent of his share in the profits and the

property of the firm.

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



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

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

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

(7 Marks, PYQ Jan 2025)

Ans. The given question is based on the Section 18 read with sections 25 & 26 of the Indian Partnership Act, 1932. Section 18 deals with the Partner to be an agent of the firm. This means that a partner is the agent of the firm for the purpose of the business of the firm.

The partner indeed virtually holds the character of both a principal and an agent. So as far as he acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed a principal and so far as he acts for his partners, he may properly be deemed as an agent. The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

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

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

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

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

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

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

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

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

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

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

However, PQR Associates can take action against P, the partner.

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

(2 Marks, PYQ, SEP 2024)

Ans. According to section 37 of the Indian Partnership Act, 1932,

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

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



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

31. State the circumstances, in which a Court may, at the suit of the partner, dissolve a partnership firm under the provisions of the Indian Partnership Act, 1932.



(7 Marks, PYQ, SEP 2024)

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

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

- (a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business.
- (d) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - ☐ Embezzlement,
 - ☐ Keeping erroneous accounts
 - ☐ Holding more cash than allowed
 - ☐ Refusal to show accounts despite repeated request etc.
- (e) **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.
- (f) **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (g) **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
 - (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.
 - (iv) Gambling by a partner on a stock exchange.

MTP (The Indian Partnership Act, 1932)

32. **"Whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm." Explain the mode of determining existence of partnership as per the Indian Partnership Act, 1932?**



(6 Marks, MTP Jan 2026 S-1)

Ans. The Indian Partnership Act, 1932

Mode of determining existence of partnership (Section 6 of the Indian Partnership Act, 1932): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

1. There was an agreement between all the persons concerned
2. The agreement was to share the profits of a business and
3. the business was carried on by all or any of them acting for all.

1. **Agreement:** Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such are not partners in such business.
2. **Sharing of Profit:** Sharing of profit is an essential element to constitute a partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
3. **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

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

(4 Marks, MTP Jan 2026 S-1)

Ans. The Indian Partnership Act, 1932

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

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

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

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

Options available to Q and R

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

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

- 34. A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C.**

(3 Marks, MTP Jan 2026 S-1)

Ans. The Indian Partnership Act, 1932

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

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

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

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

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

35. Explain the following terms under the Indian Partnership Act, 1932:**(1) Partner by holding out****(2) Nominal Partner****(3 Marks, MTP Jan 2026 S-2)****Ans. The Indian Partnership Act, 1932**

- (1) Partner by holding out (Section 28 of the Indian Partnership Act, 1932): Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.
- (2) Nominal Partner: A person who lends his name to the firm, without having any real interest in it, is called a nominal partner. He is not entitled to share the profits of the firm. Neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

**36. When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?****(2 Marks, MTP Jan 2026 S-2)****Ans. The Indian Partnership Act, 1932****Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932)**

According to Section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

**37. "Explain the concept of 'Partner by Holding Out' as provided under the Indian Partnership Act, 1932. Under what circumstances can a person be held liable as a partner by holding out?"****(6 Marks, MTP Sep 2025 S-1)****Ans. The Indian Partnership Act, 1932.**

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

Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

When a person represent himself, or knowingly permits himself, to be represented as a partner in a firm (when in fact he is not) he is liable, like a partner in the firm to anyone who on the faith of such representation has given credit to the firm.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner.

The result in both the cases is identical. It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

For the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

38. Explain the five essential elements of partnership under the Indian Partnership Act, 1932. (6 Marks, MTP Sep 2025 S-2)

Ans. The Indian Partnership Act, 1932

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **ASSOCIATION OF TWO OR MORE PERSONS:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

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

2. **AGREEMENT:** Partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual.

An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

3. **BUSINESS:** Firstly, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership.

Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. **AGREEMENT TO SHARE PROFITS:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose.

5. **BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL:**

The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

39. On the dissolution of a firm, what are the rights and obligations of partners under the Indian Partnership Act, 1932 with respect to:

- (i) The right to have the business wound up and surplus distributed,



- (ii) **The continuing authority of partners for the purpose of winding up and completing unfinished transactions, and**
- (iii) **The application of firm debts and separate debts of partners.**

(7 Marks, MTP Sep 2025 S-2)

Ans. The Indian Partnership Act, 1932

- (i) Right of partners to have business wound up after dissolution (Section 46 of the Indian Partnership Act, 1932): On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
- (ii) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise: Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.
- (iii) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:
 - (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
 - (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

40. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

(6 Marks, MTP Jan 2025 S-2)

Ans. Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

- (1) During the continuance of partnership, such transferee is not entitled
 - (a) to interfere with the conduct of the business,
 - (b) to require accounts, or
 - (c) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner, and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

- (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee

will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

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

(4 Marks, MTP Jan 2025 S-2)

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

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

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

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

Options available to Q and R

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

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

- 42. A and B operate a textile merchant business in partnership. Mr. A finances the business and is a sleeping partner. In the regular course of business, B acquires certain fabric goods belonging to C. However, B is aware that these goods are stolen property. Despite this**



knowledge, B proceeds to purchase and sell some of these stolen goods. Moreover, B records proceeds from these sales in the firm's books. Now, A wants to avoid the liability towards C, on the grounds of misconduct by B. In the light of the provisions of the Indian Partnership Act, 1932 discuss the liability of A and B towards C.

(3 Marks, MTP Jan 2025 S-2)

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

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

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

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

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

43. (i) **What is the difference between partnership and co-ownership as per the Indian Partnership Act, 1932?** (4 Marks, MTP Sept. 2024 S-1)
- (ii) **Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932?** (2 Marks, MTP Sept. 2024 S-1)

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

Basis of difference	Partnership	Co-ownership
1. Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
2. Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
3. Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
4. Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.

- (ii) Personal Profit earned by Partners (Section 16 of the Indian Partnership Act, 1932)

According to section 16, subject to contract between the partners:

- (a) If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- (b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

44. Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

(4 Marks, MTP Sept. 2024 S-1)

Ans. Mode of Settlement of partnership accounts: As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

45. State the legal position of a minor partner under the Indian Partnership Act, 1932 after attaining majority:

(A) When he opts to become a partner of the same firm.

(B) When he decides not to become a partner.

(3 Marks, MTP Sept. 2024 S-1)

Ans. (A) When he becomes partner: If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(B) When he elects not to become a partner:

- (a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

- (b) His share shall not be liable for any acts of the firm done after the date of the notice.
- (c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

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

- (i) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership? (3 Marks, MTP Sept. 2024 S-2)**
- (ii) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Can paper dealer i.e. third party make Y liable for paper supplied to X? (2 Marks, MTP Sept. 2024 S-2)**
- (iii) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B? (2 Marks, MTP Sept. 2024 S-2)**

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

- (i) Yes, it is a case of partnership.**

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

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

Reason: Sharing of profit, which is a prima facie evidence, exists but mutual agency among X and Y, which is an essential element, does not exist here. Since there is no partnership, the third party i.e. paper dealer cannot make Y liable for the paper supplied by him to X.

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

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

The Limited Liability Partnership Act, 2008

RTP (The Limited Liability Partnership Act, 2008)

1. Explain the provisions relating to the change of name of a Limited Liability Partnership (LLP) under the LLP Act, 2008.

(RTP May 2026)

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

- (1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —
 - (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade

Marks Act, 1999, as is likely to be mistaken for it, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

It is further provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

- (2) Where a LLP changes its name or obtains a new name under sub- section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
- (3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter. Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

2. Explain the following features of a Limited Liability Partnership under the LLP Act, 2008:

- (a) **Artificial legal person**
- (b) **Common seal.**

(RTP Jan 2026)

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

immortal (it can be dissolved by law alone) but not fictitious because it really exists.

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

3. Explain the legal provisions regarding the eligibility of persons to become partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008. What are the consequences if LLP carries on business with less than the minimum number of partners as prescribed?

(RTP SEP 2025)

Ans. Partners (Section 5 of the LLP Act, 2008): Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6):

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

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

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

(RTP May 2025)

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

- (1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —
 - (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

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

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

- (2) Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
- (3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

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

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

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

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

- (i) Body Corporate**
- (ii) Mutual Agency**
- (iii) Foreign LLPs**
- (iv) Artificial legal person**

(RTP Jan 2025)

Ans. Body corporate: Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP. Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

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

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

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

PYQ (The Limited Liability Partnership Act, 2008)

6. **Limited Liability Partnership (LLP) gives the benefits of Limited Liability of a company on one hand and the flexibility of Partnership on the other. Discuss according to provisions of the Limited Liability Partnership Act, 2008.**

(3 Marks, PYQ, May 2025)

Ans. LLP gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other:

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

7. **Raju and his friend Anil have approached you to help them to form a LLP. The object of the proposed LLP is to run a charitable school which provides free education to the poor children. What would be your suggestion in accordance of provisions of the Limited Liability Partnership Act, 2008?**

(3 Marks, PYQ, May 2025)

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

In the instant case, Raju and Anil cannot form LLP to run a charitable school which provides free education to the poor children.

In view of above it is suggested to them that they can form a section 8 company for this purpose.

8. (i) According to provisions of the Limited Liability Partnership Act, 2008, State the provisions with respect to registered office of LLP and changes therein. What would be consequences if these provisions are contravened?

(4 Marks, PYQ Jan 2026)

- (ii) Discuss the provisions of the Limited Liability Partnership Act, 2008 relating to the minimum number of partners required and the eligibility criteria for becoming a partner in a Limited Liability Partnership.

(2 Marks, PYQ Jan 2026)

Ans. (i) **Registered Office of Limited Liability Partnership According to Section 13 of the Limited Liability Partnership Act, 2008:**

- (1) Every Limited Liability Partnership shall have a Registered Office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a Limited Liability Partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

Changes in the Place of Registered Office:

- (3) A Limited Liability Partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

Consequences if the Provisions are Contravened:

If any default is made in complying with the requirements of this Section, the Limited Liability Partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

- (ii) **Minimum Number of Partners Required:** As per Section 6 of the Limited Liability Partnership Act, 2008, every LLP must have a minimum of two partners.

If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during that period, and has knowledge of the fact that he is carrying on business alone, shall be liable personally for the obligations of the LLP incurred during that period. Eligibility Criteria for becoming a Partner: As per Section 5, any individual or a body corporate may be a partner in a LLP; however, an individual will be disqualified if:

- (a) He is of unsound mind by a court of competent jurisdiction and finding is in the force.
- (b) He is an un-discharged insolvent.

(c) He has applied to be adjudicated as an insolvent and his application is pending.

9. **Five close friends decided to form a Limited Liability Partnership firm 'EDUDED LLP' for educating poor children as non-profit organization. They were Mr. A (Non-resident), Mr. B (Non-Resident), Ms. C (resident), Ms. D (resident) and Ms. E (resident). It was decided that Mr. A and Mr. B will be appointed as designated partners.**

With reference to provisions of the Limited Liability Partnership Act, 2008, answer each of the following:

(i) Whether EDUDED LLP can be formed for above purpose?

(ii) Whether Mr. A and Mr. B can be appointed as designated partners in EDUDED LLP?

(6 Marks, PYQ Sep. 2025)

Ans. (i) According to Section 11 of the Limited Liability Partnership Act, 2008, the essential requirement of forming LLP is carrying on a lawful business with a view to earn profit. EDUDED LLP cannot be formed for educating poor children as a non-profit organization.

In view of the above, a LLP cannot be formed for charitable or non-economic purpose.

(ii) Designated Partners (Section 7 of the Limited Liability Partnership Act, 2008): Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a Resident in India. For the purpose of this section, the term Resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

As EDUDED LLP cannot be formed because its purpose is for non-profit organization, the question of appointing Mr. A and Mr. B as designated partners does not arise.

Note: However, if the EDUDED LLP can be formed, Mr. A and Mr. B cannot be appointed as designated partners in EDUDED LLP as both are Non-Resident and the condition that at least one designated partner must be a resident in India is not fulfilled. Therefore, one designated partner must be either Ms. C or Ms. D or Ms. E as all three of them are resident.

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

(6 Marks, PYQ Jan 2025)

Ans. Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008):

The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- (b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

(c) Statement to be filed:

- there shall be filed along with the incorporation document, a statement in the prescribed form,
- made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

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

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

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

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

MTP (The Limited Liability Partnership Act, 2008)

All repeated Questions.

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The Companies Act, 2013

RTP (The Companies Act, 2013)

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1. **Sunrise Infrastructure Ltd. was incorporated with the object of developing residential housing projects as specified in its Memorandum of Association. The Board of Directors decided to invest a substantial part of the company's funds in speculative trading of shares of other companies, hoping to earn quick profits. When the shareholders questioned this act, the directors argued that since the company was duly incorporated and had wide powers of management, their decision was valid. Examine, with reference to the doctrine of ultra vires, whether the directors' action is binding on the company.**

(RTP May 2026)

Ans. The Memorandum of Association defines the scope of activities of a company. Any act done beyond the objects stated in the memorandum is ultra vires and void. The doctrine of ultra vires, established in *Ashbury Railway Carriage and Iron Co. Ltd. vs. Riche*, holds that an act beyond the powers of the company cannot be ratified even by unanimous consent of all shareholders. Such acts are wholly void and cannot bind the company.

In the instant case, the object clause of Sunrise Infrastructure Ltd. restricted the company's business to real estate development. However, the directors diverted funds into speculative share trading, which was not included in the memorandum. This activity was therefore beyond the powers conferred on the company.

Therefore, the directors' action is ultra vires the company and, therefore, void. The company is not bound by such acts, and the funds utilized for speculative purposes can be recovered. The doctrine of ultra vires protects shareholders and creditors by ensuring that the company's capital is used only for authorized purposes.

2. **Bharat Infrastructure Ltd. was incorporated in India with 55% of its paid-up share capital held by the Central Government, 20% by a State Government, and the remaining 25% by private investors. Some private shareholders argued that government control was not absolute and therefore the company should not be classified as a Government Company. Decide with reference to the Companies Act, 2013.**

(RTP May 2026)

Ans. Section 2(45) of the Companies Act, 2013 defines a government company as one in which not less than 51% of the paid-up share capital is held by the Central Government, State Government(s), or jointly by the Central and State Governments.

In the instant case, the Central and State Governments together held 75% of the paid-up share capital of Bharat Infrastructure Ltd. The remaining 25% was private investors. Taking into account the provisions of the Companies Act, 2013, Bharat Infrastructure Ltd. is a Government Company,

since the combined government holding exceeds 51%. The argument of the private shareholders is untenable.

3. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

(RTP May 2026)

Ans. Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

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

The Central Government has the power to issue license for registering a section 8 company.

- (i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (ii) The registrar shall on application register such person or association of persons as a company under this section.
- (iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

4. Mr. Ramesh Saluja incorporated a private limited company under the name Saluja & Sons Pvt. Ltd., with himself, his wife, and his children as shareholders. The newly formed company took over his existing leather business and continued its operations.

Subsequently, the company went into liquidation. The creditors contended that the company was merely a façade or alter ego of Mr. Saluja and that it lacked an independent existence. On this basis, they argued that the corporate veil should be lifted and Mr. Saluja should be held personally liable for the company's debts. With reference to the relevant case law on lifting of the corporate veil, examine whether Mr. Saluja can be held personally liable.

(RTP Jan 2026)

Ans. Under the Companies Act, 2013, a company on incorporation becomes a distinct legal person, separate from its members. The principle was established in the landmark case of Salomon v. Salomon & Co. Ltd., where it was held that even if one person holds substantially the entire shareholding, the company is not his agent or trustee. Creditors can proceed only against the company, and not against its members, unless the corporate veil is lifted in exceptional cases.

In this case, the creditors contended that Saluja & Sons Pvt. Ltd. was in reality the business of Mr. Ramesh Saluja and that he should be personally liable for the company's debts. However, the company was duly incorporated with separate legal existence and had complied with statutory requirements.

Applying the principle in Salomon v. Salomon & Co. Ltd., the company is a separate legal entity.

The creditors cannot make Mr. Saluja personally liable merely because he held almost all the shares. Thus, the veil cannot be lifted in this case, and liability rests with the company alone.

- 5. A company, ABC limited as on 31.03.2025 had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2025, ABC limited had issued additional 10,000 equity shares of ₹ 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors. Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited. State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013.**

(RTP Jan 2026)

Ans. As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, as on 31.03.2025, ABC Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2025, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post- issue, the total paid-up capital of ABC Limited is ₹ 2 lakhs (20,000 equity shares of ₹ 10 each).

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

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

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

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

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited

can be of an Associate Company.

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

6. **Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal.**

(RTP Jan 2026)

Ans. Do you agree that a Company is an artificial person?

Yes, I agree that a company is an Artificial Person:

A Company incorporated under the provisions of the Companies Act, 2013 is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law.

Further, the Company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

As the Company is an artificial person, it can act only through some human agency, viz., directors. The directors can control affairs of the company but they are not the “agents” of the members of the company. The directors can either on their own or through the common seal, if any, (of the company) can authenticate its formal acts.

Further, the Company being an artificial person has perpetual succession and it continues to exist until it is legally dissolved. The members of a company may come and go but the company will go on forever.

However, the Company being an artificial person cannot have citizenship, lack of physical action and corporate veil can be lifted.

Thus, a company is an artificial legal person.

Authorization by a Company not having a Common Seal:

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

Hence, Beeta Limited can do the authorization as mentioned in the above manner.

7. **Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2025 of Glassware Private Limited, its turnover was ₹ 1.80 crore and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the**

company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

(RTP SEP 2025)

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

- (i) paid-up share capital of which does not exceed four crore rupees, and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

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

Hence, the contention of the Company Secretary is correct.

8. In the Flower Fans Private Limited, there are only 5 members. All of them went on a pleasure trip in a boat into an open sea. The boat overturn and all of them were drowned. Explain with reference to the provisions of the Companies Act, 2013:

- (A) Is Flower Fans Private Limited no longer in existence?**
- (B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued?**

(RTP SEP 2025)

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

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

- (B) The statement given is incorrect** - A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession.

Hence, it is a legal person in its own sense.

9. **An employee, Mr. Karan, signed a contract with his employer company, ABC Limited, that he will not solicit the customers after leaving the employment from the company. But after Mr. Karan left ABC Limited, he started up his own company, PQR Limited and started soliciting the customers of ABC Limited for his own business purposes. ABC Limited filed a case against Mr. Karan for breach of employment contract and for soliciting their customers for own business. Mr. Karan contended that there is a corporate veil between him and his company and he should not be personally held liable for this. In this context, the ABC Limited seeks your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company.**

(RTP SEP 2025)

Ans. Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

However, under certain exceptional circumstances, the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (i) To determine the character of the company i.e. to find out whether co-enemy or friend.
- (ii) To protect revenue/tax
- (iii) To avoid a legal obligation
- (iv) Formation of subsidiaries to act as agents
- (v) Company formed for fraud/improper conduct or to defeat law

Based on the above provisions and leading case law of *Gilford Motor Co. Vs Horne*, the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the company only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

- 10. Pacific Motors Limited is a Government Company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lakh shares of ₹ 100 each. Pacific Motors Limited is holding five lakh five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is a Government Company under the provisions of the Companies Act, 2013?**

(RTP SEP 2025)

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

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

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

By virtue of provisions of Section 2(87) of the Companies Act, 2013, Rama Auto Private Limited is a subsidiary company of Pacific Motors Limited because Pacific Motors Limited holds more than one-half of the total voting power in Rama Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company.

Hence, Rama Auto Private Limited, being a subsidiary of Pacific Motors Limited will also be considered as a Government Company.

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

(RTP May 2025)

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

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

On the basis of above provisions of Law and facts of the case, Mr. Sharman cannot enforce any right



against the company. Company had right to remove him by making alteration in AOA.

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

(RTP May 2025)

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

1. **“Equity share capital”**, with reference to any company limited by shares, means all share capital which is not preference share capital;
Equity share capital— can be
 - (i) with voting rights; or
 - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;
2. **“Preference share capital”**, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
 - (a) **payment of dividend**, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
 - (b) **repayment**, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

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

(RTP May 2025)

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

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

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

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

(RTP Jan 2025)

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

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

For the purposes of this section —

- (I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) “layer” in relation to a holding company means its subsidiary or subsidiaries.

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

- (ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

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

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

(RTP Jan 2025)

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

- (i) the Central Government, or
- (ii) by any State Government or Governments, or
- (iii) partly by the Central Government and partly by one or more State

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

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

16. XYZ is a company incorporated under the Companies Act, 2013. The paid up share capital of the company is held by others as on 31.03.2024 in as under:

(1) Government of India 20%

(2) Life Insurance Corporation of India (Public Institution) 8%

(3) Government of Tamil Nadu 10%

(4) Government of Rajasthan 10%

(5) ABC Limited (owned by Government Company) 15%

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

(RTP Jan 2025)

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

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

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

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

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

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

PYQ (The Companies Act, 2013)

17. State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:

- 1. STS Pvt. Ltd., having a turnover of ₹ 10 crores and the paid-up capital of ₹ 1 crore (1,00,000 equity shares of ₹ 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.**
- 2. ZX Ltd., having a paid-up capital of ₹ 3 crores and turnover of ₹ 35 crores.**

(4 Marks, PYQ, May 2025)

Ans. According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—

- (i) **paid-up share capital** of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

In the instant case,

- (i) STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ₹ 10 crores and ₹ 1 crore respectively), but since it is the subsidiary company of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ₹ 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.
- (ii) ZX Ltd. cannot be considered as a small company since it is a public company.

18. Doctrine of indoor management allows all those who deal with the company to assume that the officers of the company have observed the provisions of the articles. In light of the above statement, explain the doctrine of indoor management and its exceptions, if any, according to provisions of the Companies Act, 2013.

(7 Marks, PYQ, May 2025)

Ans. Doctrine of Indoor Management: According to the “doctrine of indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.

They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above-mentioned doctrine of Indoor Management has limitations/exceptions of its own. That is to say, it is inapplicable to the following cases, namely:

- (a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
- (b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
- (c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

- 19. The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ₹ 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan?**

(4 Marks, PYQ, May 2025)

Ans. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.

Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

- (a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.

- (b) If the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

20. SNM Ltd. was registered in 2021 with a share capital of ₹ 50 Lakh divided into 5 lakhs equity share of ₹ 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM. With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025.

(3 Marks, PYQ, May 2025)

Ans. Formation of companies with charitable objects etc. (Section 8 company): Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

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

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

21. Prasad incorporated an OPC to run his new start-up in May, 2021. OPC borrowed ₹ 50 Lakhs to meet its long term fund requirements and ₹ 25 lakh to meet its working capital requirements on the basis of his project from a non-banking finance company (NBFC) in Oct, 2021. But due to some running hardships and new govt. policies OPC was failed to pay its debts to NBFC. Assets of the company were insufficient to pay the outstanding debts. According to the provisions of the Companies Act, 2013, decide whether Prasad would be liable to pay the outstanding debts of NBFC in the following circumstances:

-

- If the NBFC proceeded against the personal assets of Prasad only on the ground that he is the only shareholder and hence liable for its debts.**
- If the NBFC proves that the One Person Company was formed for fraud and cheating.**

(7 Marks, PYQ Jan 2026)

Ans. According to Section 2(62) of the Companies Act, 2013, a One Person Company (OPC) means a Company which has only one person as a member. A Company is a separate legal entity distinct from its member and enjoys limited liability.

Separate Legal Entity: When a Company is registered, it is clothed with a legal personality. Its existence is distinct and separate from that of its members.

Limited Liability: The liability of the members of the Company is limited to the extent of the nominal value of shares held by them. In no case, the shareholders can be asked to pay anything

more than the unpaid value of their shares. The liability of OPC's sole member is limited to the extent of unpaid share capital, if any. In the instant case, OPC failed to pay its debts to NBFC. Assets of the company were insufficient to pay the outstanding debts.

According to above provisions, we can conclude that: -

- (i) If the NBFC proceeded against the personal assets of Prasad only on the ground that he is the only shareholder and hence liable for its debts: Prasad will not be personally liable to pay the outstanding debts of the NBFC merely on the ground that he is the only shareholder of the OPC because the debts of the OPC are its own and the OPC enjoys limited liability. Creditors cannot proceed against the personal assets of the member merely because he is the sole shareholder.

Therefore, the NBFC cannot proceed against the personal assets of Prasad only on the ground that he is the sole shareholder.

- (ii) If the NBFC proves that the One Person Company was formed for fraud and cheating: Where a Company is incorporated or carried on with intent to defraud Creditors or for any fraudulent purpose, the "Doctrine of Lifting of Corporate Veil" applies and the Corporate Veil can be lifted. In such cases, the protection of limited liability is withdrawn and the member can be held personally responsible for the debts of the company. Accordingly, if the NBFC proves that the OPC was incorporated for fraudulent purposes, the protection of limited liability can be withdrawn and Prasad would be liable to pay the outstanding debts of NBFC and his personal assets can be used to settle the outstanding liabilities.

- 22. (i) What do you mean by 'Common Seal'? Is it necessary for a company to have Common Seal? Discuss as per provisions of the Companies Act, 2013.**

(3 Marks, PYQ Jan 2026)

- (i) Whether the phrases "Company Limited by Shares" and "Company Limited by Guarantee" are same? If not, explain any four differences between these two according to provisions of the Companies Act, 2013.**

(4 Marks, PYQ Jan 2026)

- Ans. (i) Meaning of Common Seal:** Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

Is it necessary for a Company to have a Common Seal?

Having a common seal is optional now. The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 of the Companies Act, 2013 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

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

Company Secretary.

(ii) Whether the phrases ‘Company Limited by Shares’ and ‘Company Limited by Guarantee’ are same?

No, the phrases 'Company Limited by Shares' and 'Company Limited by Guarantee' are not same. Distinction between "Company Limited by Shares" and "Company Limited by Guarantee" is tabulated as under:

S. No.	Company Limited by Shares	Company Limited by Guarantee
1.	It is defined under Section 2(22) of the Companies Act, 2013.	It is defined under Section 2(21) of the Companies Act, 2013.
2.	It is a company when the liability of the members of a company is limited by its Memorandum of Association to the amount (if any) unpaid on the shares held by them.	It is a company having the liability of its members limited by the Memorandum to contribute to the assets of the company in the event of its being wound up.
3.	The members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions.	The members may be called upon to discharge their liability at any time, either during the company's life-time or during its winding up.
4.	This company can raise its initial working funds from its members.	This company does not raise its initial working funds from its members.
5.	For meeting the debts of the Company, the shareholder may be called upon to contribute only to the extent of the amount which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the Company's debt.	The liability of a member of a guarantee company is limited to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

- 23. The paid-up capital and turnover of Aaradhya Cosmetics Private Ltd. (ACPL) for FY 2024-25 is ₹4 crores and ₹45 crores respectively. Directors of ACPL decided not to follow some provisions as it is a small company according to section 2(85) of the Companies Act, 2013. Company secretary of Pooja Fashions Private Limited (PFPL) contended that ACPL is not a small company as ACPL is a holding company of (PFPL). Decide whether ACPL Cosmetics Ltd. can avail status of small company according to provisions of the Companies Act, 2013. (2 Marks, PYQ Jan 206)**

Ans. Small Company: Small company given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company:

- (i) paid-up share capital of which does not exceed 4 crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 40 crores rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions:

This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

In the given case, although the paid-up capital and turnover of Aaradhya Cosmetics Private Ltd. is within the terms of Small Company but, Aaradhya Cosmetics Private Limited (ACPL) is the holding company of Pooja Fashions Private Limited (PFPL) and as per the proviso (A) to Section 2(85), holding company shall not be treated a Small Company. Hence ACPL Cosmetics Private Ltd. cannot avail the status of a Small Company. Contention of directors of ACPL is incorrect.

- 24. Mr. RM was engaged in the trading of handloom items with his wife. One of their friends suggested that they should form a private limited company. By corporatizing their business, they could gain better recognition and even explore export opportunities.**

They established M/s RM Private Limited with both as the sole members. They got the work orders on job basis from local artisans, sold their products in the Indian market, and exported them as well. The company also secured a line of credit from the bank amounting to ₹ 30 lakhs.

Tragically, Mr. RM met with an accident and passed away. Now Mrs. RM was the only member in the private limited company. A family friend suggested including her brother as a member, but she declined. Instead, she decided to convert the private limited company into a One Person Company (OPC) and nominate her brother, Mr. AK, who is currently employed in London, UK.

Examine with reference to the Companies Act, 2013:

- (i) Whether Mrs. RM's decision to convert the private limited company into a One Person Company (OPC) is legally valid; and**
- (ii) When Mrs. RM's decision to nominate her brother Mr. AK, as a nominee, is not legally valid?**

(7 Marks, PYQ Sep. 2025)

- Ans.** (i) A Private Limited Company can be converted into an OPC if it meets the eligibility criteria under Section 2(62) of the Companies Act, 2013.

An OPC can have only one member and the Memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the Company.

The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the registrar.

No person shall be eligible to become nominee in more than one OPC.

Further only a natural person who is an Indian citizen whether resident in India or otherwise-

- shall be eligible to incorporate a One Person Company;
- shall be a nominee for the sole member of a One Person Company.

Explanation I - For the purposes of this rule, the term “resident in India” means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In view of the above, in the given case, Mrs. RM's decision to convert the Company into an OPC is legally valid.

- (ii) Nominating Mr. AK may not be valid if he does not meet the residency requirement (i.e., if he has not stayed in India for at least 120 days in the preceding financial year). In that case, Mrs. RM must nominate another Indian resident.

(ii) ALTERNATE ANSWER

Here, Mrs. RM's decision to nominate her brother Mr. AK, as a nominee is not legally valid in the case where he has obtained the foreign citizenship being in employment in London UK.

Note: Since nothing is specified as regards the citizenship of Mr. AK, a benefit of doubt may be given to the students who assumes that Mr. AK has obtained the UK citizenship being therein employment. In that case he may lose the Indian Citizenship and shall be disqualified to be nominated as a nominee.

25. (i) "Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient.

(4 Marks, PYQ Jan 2025)

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

(3 Marks, PYQ Jan 2025)

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

- Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
 - o promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
 - o Such company intends to apply its profit in
 - o Promoting its objects and
 - o Prohibiting the payment of any dividend to its members.
- The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to
 - o Converts its status and change its name
 - o Wind-up
 - o Amalgamate with another company having similar object.
- A partnership firm can be a member of Section 8 company.

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

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

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

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles. Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

- 26. After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate**

signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.

Would your answer be different, if the company had a company secretary?

(3 Marks, PYQ, SEP 2024)

Ans. The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

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

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

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

MTP (The Companies Act, 2013)

27. **Mr. Mohan had purchased some goods from Sunflower Limited on credit.**

A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Ramesh is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company. Analyse the situation under the Companies Act, 2013 and decide whether Mr. Mohan is free from his liability.

(4 Marks, MTP Jan 2026 S-1)

Ans. The Companies Act, 2013

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive

Notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the Articles or Memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers

of the company are validly performed, if they are within the scope of their apparent authority.

So long as an act is valid under the Articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and Mr. Ramesh gave to receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company. Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company.

28. Mike Limited is incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013?

(3 Marks, MTP Jan 2026 S-1)

Ans. The Companies Act, 2013

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison Office was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

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

(3 Marks, MTP Jan 2026 S-1)

Ans. The Companies Act, 2013

One of the features of a company is that it has perpetual succession. As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013.

The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

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

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

(3 Marks, MTP Jan 2026 S-2)

Ans. The Companies Act, 2013

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

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

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

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

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

31. **Referring to the provisions of the Companies Act, 2013, answer the following:**

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

(5 Marks, MTP Jan 2026 S-2)

Ans. The Companies Act, 2013

"Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) To determine the character of the company i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- (2) To protect revenue/tax: In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.
 - (i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the

corporate entity.

- (ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.
- (3) To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).
- (4) Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
- (5) Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

32. What is the effect of Memorandum and Articles when registered?

(2 Marks, MTP Jan 2026 S-2)

Ans. The Companies Act, 2013

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

All monies payable by any member to the company under the

-  33. **The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ₹ 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan?**

(4 Marks, MTP Jan 2026 S-2)

Ans. The Companies Act, 2013

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra vires the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But

(a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.

(b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount

34. Briefly explain the nature of shares under the Companies Act, 2013 with reference to legal position of shareholders, treatment as movable property, and requirement of numbering.

(7 Marks, MTP Sep 2025 S-2)

Ans. The Companies Act, 2013

Nature of shares: Section 2(84) of the Companies Act, 2013 defines the term ‘share’ which means a share in the share capital of a company and includes stock.

A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company’s assets to which a person holding a share is entitled.

Share is an interest in the company: Farwell Justice, in *Borland Trustees vs. Steel Bors. & Co. Ltd.* observed that “a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount”. The shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.

Shares are a movable property: According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company. Shares shall be numbered: Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

- 35. A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company held a general meeting by giving only 14 days' notice. Is this valid?**

(3 Marks, MTP Sep 2025 S-2)

Ans. The Companies Act, 2013

A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.

Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

- 36. Parasnath Infraheight Limited is a public company and having 215 members of which 20 members were employees in the company during the period 1st June, 2022 to 30th June, 2024. They were allotted shares in Parasnath Infraheight Limited on 1st April, 2018 which are held by them till today i.e. 31st August 2024. Now, the company wants to convert itself into a private company. State with reasons, whether Parasnath Infraheight Limited is required to reduce the number of members under the provisions of the Companies Act, 2013?**

(7 Marks, MTP, May 2025 S-1)

Ans. According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:
Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.
Provided further that—
 - (A) persons who are in the employment of the company; and
 - (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

In the given problem, Parasnath Infraheight Limited is a public company and wants to convert itself into a private company. It is having 215 members out of which 20 members were employees during the period 1st June, 2022 to 30th June, 2024. These members were members in the company from 1st April, 2018 which are held by them till date i.e. 31st August, 2024.

Following the provisions of Section 2(68) of the Act, 20 members were employees of the company, but they were not employee at the time of getting membership and nor on existing date i.e. 31st August, 2024. Hence, they will be considered as members for the purpose of the limit of 200 members. Therefore, the company is required to reduce the number of members before converting it

into a private company.

37. "What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013?"

(7 Marks, MTP, May 2025 S-1)

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

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

38. Sooraj Pharma Ltd., a public company, its Articles of Association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Smith, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ₹ 25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, Sooraj Pharma Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior

providing such loan hence company not liable to pay such loan.

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

(4 Marks, MTP, May 2025 S-1)

Ans. Doctrine of Indoor Management

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

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

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

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

39. Explain the classification of capital under Company Law as per the Companies Act, 2013. Discuss the different types of capital and the statutory definitions associated with each.

(7 Marks, PYQ May 2025)

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

- (i) Nominal or authorised or registered capital:** This form of capital has been defined in section 2(8) of the Companies Act, 2013. “Authorised capital” or “Nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. Thus, it is the sum stated in the memorandum as the capital of the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty. It is usually fixed at the amount, which, it is estimated, the company will need, including the working capital and reserve capital, if any.
- (ii) Issued capital:** Section 2(50) of the Companies Act, 2013 defines “issued capital” which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash.

(iii) Subscribed capital: Section 2(86) of the Companies Act, 2013 defines “subscribed capital” as such part of the capital which is for the time being subscribed by the members of a company.

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

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

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

40. A company, DEF limited as on 31.03.2024 had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2024, DEF limited issued additional 10,000 equity shares of ₹ 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to MNO private limited company. MNO is a holding company of JKL private limited by having control over the composition of its board of directors.

Now, JKL private limited claims the status of being a subsidiary of DEF limited as being a subsidiary of its subsidiary i.e. MNO private limited. Examine the validity of the claim of JKL private limited.

State the relationship if any, between DEF limited & MNO Private Limited as per the provisions of the Companies Act, 2013.

(7 Marks, MTP Jan 2025 S-1)

Ans. As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, as on 31.03.2024, DEF Limited had a paid-up capital of ₹ 1 lakh (10,000 equity shares of ₹ 10 each). In June 2024, DEF Limited issued an additional 10,000 equity shares, which was fully subscribed. Post-issue, the total paid-up capital of DEF Limited is ₹ 2 lakhs (20,000 equity shares of ₹ 10 each).

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

MNO Private Limited is the holding company of JKL Private Limited, having control over the composition of its Board of Directors. But since MNO Private Limited cannot be termed as a subsidiary company of DEF Limited, JKL Private Limited cannot claim the status of being a subsidiary of DEF Limited in terms of the first criteria, that of controlling the composition of directors.

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

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

In terms of the above provision, the relationship between DEF Limited and MNO Private Limited can be of an Associate Company.

Since MNO Private Limited holds more than 20 percent of voting power in DEF Limited, it can be considered as an Associate Company of DEF Limited.

41. Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company? (7 Marks, MTP Jan 2025 S-1)

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

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

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

OPC (One Person Company) – salient features

- ◆ Only one person as member.
- ◆ Minimum paid up capital – no limit prescribed.
- ◆ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of the company.
- ◆ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- ◆ Such other person may be given the right to withdraw his consent.
- ◆ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ◆ Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.
 - ☐ shall be eligible to incorporate an OPC;
 - ☐ shall be a nominee for the sole member of an OPC.
- ◆ No person shall be eligible to incorporate more than one OPC or become nominee in more

than one such company.

- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ◆ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- ◆ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.
- ◆ If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

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

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

(4 Marks, MTP Jan 2025 S-1)

Ans. Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. It is a fundamental rule of Company Law that any act done, or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, borrowing more than ₹1 crore was clearly beyond MN Limited’s powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore. Hence, the decision of the company denying the repayment of the loan being ultra virus the company shall be valid for ₹ 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

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

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

- 43. After incorporation of Unique Private Limited (the company) on 15th May, 2024 the share certificates were issued to Arnav, Sohail and Suman being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Arnav and Sohail, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Suman, a director, about the validity of the share certificate signed by other two directors, Arnav and Sohail, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors.**

Would your answer be different, if the company had a company secretary?

(3 Marks, MTP Jan 2025 S-1)

- Ans.** The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

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

In the instant case, the objection of Suman is not valid as the share certificate was signed by two directors Arnav and Sohail as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

- 44. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share Capital of ABC Limited is ₹100 Crores.**

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

(4 Marks, MTP Sept. 2024 S-1)

- Ans.** As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is

not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ₹15 crore, which is less than requisite control of 20% of total share capital (i.e. ₹100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

- 45. Alfa school is a section 8 company which started imparting education on 1.4.2015, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?**

(3 Marks, MTP Sept. 2024 S-1)

Ans. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a licence is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this section subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put ‘Limited’ or ‘Private Limited’ against the company’s name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
However, no such order shall be made unless the company is given a reasonable opportunity of being heard.
- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties

and obligations as may be specified in the order.

46. **The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹9.5 crore (95 lakh shares of ₹10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹5 crore in the form of 5 lakh shares of ₹100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013? (7 Marks, MTP Sept. 2024 S-2)**

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

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

As per Section 2(87) of the Companies Act, 2013, “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

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The Negotiable Instruments Act, 1881

RTP (The Negotiable Instruments Act, 1881)

1. **Mr. Anil drew a bill of exchange in Kolkata on Mr. Bimal, a resident of New York, and made it payable in Delhi. On maturity, the bill was dishonoured, and Anil sued Bimal in India claiming interest at the rate of 18% as applicable in Kolkata. Bimal contended that his liability was governed by New York law, where the rate of interest was only 6%. Decide the liability of Bimal with reference to the provisions of the Negotiable Instruments Act, 1881.**

(RTP May 2026)

Ans. Section 11 of the Negotiable Instruments Act, 1881 defines an inland instrument as a promissory note, bill of exchange, or cheque drawn or made in India and either payable in India or drawn upon a person resident in India. Section 12 provides that any instrument which is not an inland instrument is deemed to be a foreign instrument.

Further, Section 134 of the Act states that in the absence of a contrary contract, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated by the law of the place where the instrument is made, whereas the liability of the acceptor or indorser is determined by the law of the place where the instrument is payable.

Here, the bill was drawn by Anil in Kolkata on Bimal, a resident of New York, and was made payable in Delhi. On dishonour, Anil claimed interest at 18% as per the law prevailing in India, while Bimal claimed that his liability should be limited to 6% under New York law.

Since the bill was drawn in India but made payable in Delhi, the liability of the acceptor (Bimal) is governed by Indian law, i.e., the law of the place of payment. Therefore, Bimal is liable to pay interest at 18% as claimed by Anil.

2. **Define the following Instruments under the Negotiable Instruments Act, 1881:**

- (i) Bearer Instruments**
- (ii) Order Instruments**
- (iii) Inland Instruments**
- (iv) Foreign Instruments**

(RTP May 2026)

Ans. Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words “or bearer” or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.

“Inland instrument”: A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

“Foreign instrument”: A foreign instrument is one which is not an inland instrument.

3. Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario:
- (i) Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties.
 - (ii) Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA.
Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company.

(RTP Jan 2026)

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

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

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

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

mere delivery thereof. (Section 57).

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

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

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

In the instant case, the bill of exchange was:

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

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

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

(RTP Jan 2026)

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

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

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

(RTP SEP 2025)

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

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

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

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

(RTP May 2025)

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

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

- (a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- (b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and

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

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

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

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

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

(RTP Jan 2025)

Ans. Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881] Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
 - to another person from that account
 - for the discharge, in whole or in part, of any debt or other liability,
- [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
 - either because of the—
 - o amount of money standing to the credit of that account is insufficient to honour the cheque, or
 - o that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

In the instant case,

- (i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 20,000, or with both.
- (ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

- 8. Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los**

Angeles, USA. Decide whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company.

(RTP Jan 2025)

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

In the instant case, the bill of exchange was:

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

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

PYQ (The Negotiable Instruments Act, 1881)

9. "Delivery of an instrument is essential whether instrument is payable to bearer or order for effecting the negotiation." Discuss this statement with reference to provisions of the Negotiable Instruments Act, 1881.

(3 Marks, PYQ, 2025)

Ans. As per Section 46 of the Negotiable Instruments Act, 1881, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

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

10. Ram purchased a second-hand car from his friend Rohan for ₹ 5 lakhs on 10th November, 2022. He paid ₹ 4 lakh immediately and promised to pay ₹ 1 lakh within a year. But, he could not pay the remaining amount till December-2023. On 5th January, 2024 Ram received an invitation for Rohan's wedding which he could not attend but sent a cheque of ₹ 51,000 as gift by post.

When Rohan deposited the cheque, it was returned unpaid due to insufficient balance in the account of Ram. Rohan considered it as an offence under Section 138 of the Negotiable Instruments Act, 1881.

Advise

- (i) Whether Ram would be held liable for dishonour of cheque?
- (ii) Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881.

(7 Marks, PYQ, May 2025)

Ans. According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
 - either because of the—
 - o amount of money standing to the credit of that account is insufficient to honor the cheque, or
 - o that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Explanation: For the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

- (i) In the given question, Rohan received a cheque from Ram, for ₹ 51,000 as a gift for his marriage. In terms of section 138, cheque given as a gift does not fall within this section. Hence, Ram would not be held liable for dishonour of cheque.
- (ii) The explanation to the section provides that for the purpose of section 138 only a legally enforceable debt or other liability is to be taken into consideration. The cheque of ₹ 51,000 was issued in the nature of a gift and not as a part of the payment for the balance amount of car. Hence, Rohan was not justified in considering the dishonour of cheque, an offence under section 138 of the Negotiable Instruments Act, 1881.



11. Alok bought some goods from Manish on credit. Later, he issued a cheque for the dues from his bank account and asked Manish to encash the cheque within two days. On the day Alok issued the cheque, there was a sufficient balance to pay Manish's dues. Manish presented the cheque after one month, which was returned due to insufficient funds. Manish made a demand for the payment, but Alok failed to pay. Manish send him notice to pay the outstanding debts. Alok ignored the notice. Manish filed a case for dishonor of the cheque. Alok defended himself on the grounds that Manish failed to encash the cheque within two days as specified by him and that he had no reason to believe at the time of issuance of the cheque that it might be dishonoured.

Analyse -

- (i) Whether Alok's defences are valid under the provisions of the Negotiable Instruments Act, 1881.
- (ii) Whether Manish can file a suit against Alok for dishonour of cheque and within how many days he can file the complaint after dishonour under the provisions of the Negotiable Instruments Act, 1881?

(7 Marks, PYQ Jan 2026)

Ans. Section 138 of the Negotiable Instruments Act, 1881 covers dishonor of cheques for insufficiency of funds in the account.

- (i) Section 138 shall not apply, unless the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier. In the instant case, Alok's defenses are not valid as Manish presented the cheque within one month i.e. within the validity period of three months.
- (ii) Section 138 shall not be applied unless the below conditions are complied with:

- (a) Demand for the payment through the notice:

The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

- (b) Failure of drawer to make payment:

The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. The complaint can be filed after 45 days of dishonor of the cheque i.e., 30 days of notice period + 15 days of the receipt of the said notice.

Therefore, in the instant case, since Manish sent notice to Alok for outstanding debts but Alok ignored the notice, Manish can file a suit against Alok and can file a complaint within 45 days of dishonor of cheque.

12. (i) Mr. K draws a bill of exchange payable 60 days after sight to Mr. J. Mr. J holds the bill for 30 days before presenting it to Mr. N, the drawee, for acceptance. Mr. N accepts the bill upon presentation. Decide as per the provisions of the Negotiable Instruments Act, 1881, when does the maturity period of the bill commence?

(3 Marks, PYQ Sep. 2025)

- (ii) A promissory note is made payable at a specific place on a fixed date. The holder, Mr. Mohan presents the note for payment two days after the due date because of unforeseen circumstances. Decide each of the following as per the provisions of the Negotiable Instruments Act, 1881:

(A) Does the delay in presentation affect Mr. Mohan's right to recover the amount?

(B) Under what circumstances can a delay in presentation be excused according to the Act.



(2 Marks, PYQ Sep. 2025)

Ans. (i) According to Section 61 of the Negotiable Instruments Act, 1881, when a bill is made payable “after sight”, the maturity period is calculated from the date of acceptance of the bill by the drawee. The period of holding the bill by the payee before presenting it for acceptance does not affect the commencement of the maturity period.

In the present case, Mr. K draws a bill payable 60 days after sight in favour of Mr. J. Although Mr. J keeps the bill for 30 days before presenting it to Mr. N, the drawee, the maturity period will not begin until the date on which Mr. N accepts the bill.

Therefore, the maturity period of the bill commences from the date of acceptance by Mr. N.

(ii) (A) No, Mr. Mohan’s right to recover the amount does not get affected due to the delay in presentation of the promissory note two days after the due date because of unforeseen circumstances as it is provided under Section 75A of the Negotiable Instruments Act, 1881.

(A) ALTERNATE ANSWER

Yes, the delay in presentation could affect Mr. Mohan's right to recover the amount. According to section 64 of the Act, a promissory note must be presented for payment at maturity. Failure to do so may discharge the maker from liability to the extent of any loss caused by the delay.

(B) Excuse for delay in presentment for acceptance or payment (Section 75A)

Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.

13. What are the rules governing the compensation payable in the event of dishonour of a negotiable instrument under the provisions of the Negotiable Instruments Act, 1881?

(7 Marks, PYQ Jan 2025)

Ans. Rules as to compensation (Section 117 of the Negotiable Instruments Act, 1881):

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly

incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.



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

(4 Marks, PYQ Jan 2025)

- (ii) Priya, a small business owner, receives a bill of exchange from her customer, Sanjay, which is due for payment on October 15th. On October 12th, Priya presents the bill of exchange for payment at Sanjay's office during regular business hours, but Sanjay is not present. Priya leaves the bill with Sanjay's assistant, requesting to be presented to Sanjay for payment when he returns. However, Sanjay's assistant forgot to give the bill, and Sanjay does not make the payment by the due date, and the bill is dishonoured. Based on the provisions of the Negotiable Instruments Act, 1881, examine whether Priya's presentation of the bill of exchange to Sanjay's assistant is valid under law.

(3 Marks, PYQ Jan 2025)

- Ans. (i) Section 20 of the Negotiable Instruments Act, 1881 reads as “Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

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

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

- (ii) Presentment for payment [Section 64 of the Negotiable Instruments Act, 1881]

As per section 64 of the Negotiable Instruments Act, 1881, promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof

respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

So, presentment for payment must be made to the person primarily liable on the instrument, or in their absence, at the proper place during the usual business hours.

In this case, Priya presented the bill at Sanjay's office during regular business hours, but since Sanjay was not present, she left the bill with his assistant.

While leaving the bill with the assistant might be considered a practical step, it does not fulfil the strict legal requirement of presenting the bill directly to the drawee (Sanjay) or his authorised representative for payment.

Therefore, the presentation of the bill by Priya to Sanjay's assistant is not valid under law.

15. With reference to provisions of the Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be complied with for not constituting such an offence?

(4 Marks, PYQ, SEP 2024)

Ans. According to Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

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

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

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

- (a) **Cheque presented within validity period:** The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) **Demand for the payment through the notice:** the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- (c) **Failure of drawer to make payment:** the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

16. (A) All cheques are bills while all bills are not cheques. Explain the additional features of a

cheque which differentiate a cheque from bill as per the Negotiable Instruments Act, 1881.

(B) Ambiguous instrument

(3 Marks, PYQ, SEP 2024)

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

The following two features distinguish a cheque from bill

(a) Must be drawn on a specified banker

(b) It must be payable on demand

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

(B) Ambiguous Instrument: Section 17 of the Act, reads as: "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly." Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument.

MTP (The Negotiable Instruments Act, 1881)

17. What is a cheque under the Negotiable Instruments Act, 1881, and who are the parties involved? What are the essential elements of a cheque?

(7 Marks, MTP Jan 2026 S-1)

Ans. The Negotiable Instruments Act, 1881

CHEQUE [Section 6 of the Negotiable Instruments Act, 1881]

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to Cheque

1. **Drawer:** The person who draws a cheque i.e., makes the cheque (Debtor).

His liability is primary and conditional.

2. **Drawee:** The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.

3. **Payee:** The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

a. all the essential characteristics of a bill of exchange

b. Must be drawn on a specified banker.

c. It must be payable on demand.

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

(4 Marks, MTP Jan 2026 S-1)

Ans. The Negotiable Instruments Act, 1881

Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]

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

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

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

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

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

19. **Explain the legal provisions regarding presentment for acceptance of a bill of exchange under the Negotiable Instruments Act, 1881. What are the consequences of failure to present a bill for acceptance? Also, distinguish it from the presentment of a promissory note for sight.**



(7 Marks, MTP Sep 2025 S-1)

Ans. The Negotiable Instruments Act, 1881

Presentment for acceptance [Section 61 of the Negotiable Instruments Act, 1881]: A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight [Section 62]: A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default.

20. Classify the following instruments as inland or foreign instruments as per the Negotiable Instruments Act, 1881 and justify your classification with proper reasoning.

- (i) A promissory note is made in Kolkata and is payable in Mumbai.
- (ii) A bill is drawn in Varanasi on a person resident in Jodhpur, but it is made payable in Singapore.
- (iii) A, resident of Agra, draws a bill of exchange in Agra on B, a merchant in New York, and B accepts it as payable in Delhi.
- (iv) A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India.
- (v) A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in Dubai.

(7 Marks, MTP Sep 2025 S-1)

Ans. The Negotiable Instruments Act, 1881

“Inland instrument” and “Foreign instrument” [Sections 11 & 12 of the Negotiable Instruments Act, 1881]

“Inland instrument”: A promissory note, bill of exchange or cheque drawn or made in India and made payable in or drawn upon any person resident in India shall be deemed to be an inland instrument.

“Foreign instrument”: A foreign instrument is one which is not an inland instrument. In the instant case,

- (i) A promissory note made in Kolkata and payable in Mumbai is an Inland instrument
- (ii) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore) is an Inland instrument
- (iii) A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in New York. And B accepted the bill of exchange as payable in Delhi. In this case, the bill of exchange was drawn in India and also payable in India. Hence, it is an inland instrument.
- (iv) A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India. It is a Foreign instrument as it is Drawn outside India, payable in India.
- (v) A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in

Dubai. It is a Foreign instrument as it is Drawn outside India, on a person residing outside India, payable outside India.

21. Under what circumstances is presentment for payment of a negotiable instrument not necessary under the Negotiable Instruments Act, 1881?

(7 Marks, MTP Sep 2025 S-2)

Ans. The Negotiable Instruments Act, 1881

When presentment unnecessary (Section 76 of the Negotiable Instruments Act, 1881)

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

(a)

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

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

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

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

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

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

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

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

22. 'Nakul' made promissory note in favour of 'Sahdev' of ₹ 10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instruments Act, 1881?

(7 Marks, MTP Sep 2025 S-2)

Ans. The Negotiable Instruments Act, 1881

According to Section 48 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery



thereof. a Further, delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered.

The delivery can be, actual or constructive.

- (i) Actual delivery takes place when the instrument changes hand physically.
- (ii) Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the present case, Nakul made a promissory note in favour of Sahdev and delivered it to him. Sahdev, in turn, indorsed the note in favour of Arjun and delivered it to Arjun's agent. This constitutes valid constructive delivery to Arjun. The subsequent death of Arjun's agent and the fact that Arjun later found the instrument in his agent's drawer does not affect the validity of the negotiation.

Therefore, since there was valid indorsement and delivery, Arjun has become the holder of the promissory note and is entitled to recover the amount from Nakul.

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

(7 Marks, MTP, May 2025 S-1)

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

Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

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

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

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

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

(7 Marks, PYQ May 2025)

Ans. Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value. The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer. It is to be noted that Hundies, Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or usage.

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

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

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

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

Essential Characteristics of Negotiable Instruments

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

25. What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881?

(7 Marks, MTP Jan 2025 S-2)

Ans. Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder

may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

26. **Utkarsh purchased some goods from Saksham for ₹50,000 on 14th August. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 pm. Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August (3:00 pm). Saksham treated the bill as dishonoured for non-acceptance. Referring the provisions of the Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance?**

(3 Marks, MTP Sept. 2024 S-2)

Ans. According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

In the instant case, Saksham drawn a bill of exchange on Utkarsh and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance. Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

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