

## PAPER – 2: BUSINESS LAWS

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Question No. **1** is compulsory.

Attempt any **four** questions from the remaining **five** questions.

Working Notes should form part of the answer.

### Question 1

- (a) (i) 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 25<sup>th</sup> January 2025, Mr. PG wants to buy 20,000 shares of an unlisted company @ ₹ 500/- each. But due to insufficiency of funds, he asked Mr. VG for ₹ 40 lakhs. Mr. VG transferred ₹ 40 lakhs to Mr. PG. After about three months, Mr. VG reminded that Mr. PG had not refunded ₹ 40 lakhs to him till then. He asked him to pay back his money. Mr. PG told him that he was trying very hard to sell the shares at a reasonable price of 10% more than the price at which he bought these shares but was unable to do so due to market conditions. He asked Mr. VG to sell his shares on his behalf and authorised him to appropriate the amount of loan of ₹ 40 lakhs with interest out of the sale proceeds. Mr. VG agreed to do so.

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

With reference to provisions of the Indian Contract Act, 1872, whether the revocation of said agency by Mr. PG was lawful? **(3 Marks)**

- (ii) M/s GS Famous General Store in NK Market Delhi got a purchase order of 5 kg. Mamra Badam @ ₹ 3,400/- per kg. from Mr. PK to deliver at his residence in Rohini. When the delivery boy of M/s GS Famous General Store reached at Mr. PK's residence, he found the door locked. When the delivery boy called him on mobile telephone, he told him to hand over the goods to his neighbour Mr. Shah. Mrs. Shah was unaware of the fact that the Mamra Badam were not belonging to them, mixed the Mamra Badam with California Almond. When Mr. Shah told her that the Mamra

*Badam were belonging to Mr. PK, she again packed the 5 kg. Mamra Badam and delivered it to Mr. PK. This fact came to light when Mr. PK returned the packet to M/s GS Famous General Store by saying that it is not up to the quality and he refused to accept the packet.*

*In above circumstances, what is the remedy available to Mr. PK according to provisions of the Indian Contract Act, 1872? (4 Marks)*

*(b) Do you agree that a company is an artificial person? Elucidate. Also explain how the authorization by M/s Beeta Limited, a company incorporated under the Companies Act, 2013 can be made in case it does not have a common seal. (5 + 2 = 7 Marks)*

*(c) 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)*

**Answer**

**(a) (i)** 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.

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

According to Section 160 & 161 of the Indian Contract Act, 1872, it is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

In the given question, Mrs. Shah mixed Mamra Badam with California Almond bailed by Mr. PK and then packed without information and delivered to Mr. PK. Mamra Badam once mixed cannot be separated.

As she mixed the two different kinds of almond, Mr. PK is entitled to be compensated by Mr. Shah. He cannot return goods to M/s GS Famous General Store.

- (b) Yes, I agree that a company is an Artificial Person.

A Company incorporated under the provisions of the Companies Act, 2013 is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law.

Further, the Company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

As the Company is an artificial person, it can act only through some human agency, viz., directors. The directors can control affairs of the company but they are not the "agents" of the members of the company. The directors

can either on their own or through the common seal, if any, (of the company) can authenticate its formal acts.

Further, the Company being an artificial person has perpetual succession and it continues to exist until it is legally dissolved. The members of a company may come and go but the company will go on forever.

However, the Company being an artificial person cannot have citizenship, lack of physical action and corporate veil can be lifted.

Thus, a company is an artificial legal person.

**Authorization by a Company not having a Common Seal:**

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the Company has appointed a Company Secretary.

Hence, M/s Beeta Limited can do the authorization as mentioned in the above manner.

**(c) (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.

**Question 2**

- (a) (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)**

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

**(3 Marks)**

- (b) *Explain the Memorandum of Association (MOA) and Articles of Association (AOA) of a company. Also explain any three differences between MOA and AOA.*

**(7 Marks)**

- (c) 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)**

#### Answer

- (a) (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.

**(b) Memorandum of Association (MoA)**

The Memorandum of Association of Company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It contains the fundamental conditions upon which alone the Company can be incorporated. It is the very foundation on which the whole edifice of the company is built.

**Articles of Association (AoA)**

The Articles of Association of a Company are its Rules and Regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the Company. Articles of Association is in fact, the Rules, Regulations and Bye Laws for the internal management of the affairs of the Company.

**The following are the key differences between the Memorandum of Association and the Articles of Association:**

- (1) **Clauses** - Under Section 4 of the Companies Act, 2013, a Memorandum of Association (MOA) must contain six mandatory clauses viz., the Name Clause, Registered Office Clause, Object Clause, Liability Clause, Capital Clause, and Subscription Clause. These clauses, which serve as a company's charter, define its fundamental identity, scope of operations, and the relationship between the company and the outside world.

Whereas the Articles of Association of a Company shall contain the regulations for management of the company. These Articles shall also contain such matters, as may be prescribed but nothing prescribed in this sub-section shall be deemed to prevent a Company from including such additional matters in its Articles as may be considered necessary for its management.

- (2) **Objectives:** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lay down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.
- (3) **Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.
- (4) **Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.



- (5) **Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.
- (c) (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.

**Question 3**

- (a) *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 5<sup>th</sup> 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 5<sup>th</sup> 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)**

- (b) 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)**

- (c) A, B, and C act as co-sureties for a loan of ₹4,00,000/- taken by R from XYZ Bank. There are three bonds specifying different liability limits for each surety such as A's liability is limited to ₹ 1,00,000/-, B's liability is limited to

*₹ 2,00,000/- and C's liability is limited to ₹ 4,00,000/-. Due to financial difficulties, R defaults on the loan, and the bank seeks to recover the amount from the sureties.*

*As per the provisions of the Indian Contract Act, 1872,*

- (i) Analyse and determine the amount each co-surety (A, B, and C) is liable to pay, and*
  - (ii) What will be your answer if the loan amount is ₹ 6,00,000/-instead of ₹ 4,00,000/-?*
- (6 Marks)**

**Answer**

- (a) (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 5<sup>th</sup> 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.

- (b) (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.

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

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

**In the instant case,**

- (i) A, B and C act as co-sureties for a loan of ₹ 4,00,000 taken by R from XYZ bank. As per specific bonds by each of them, A's liability is limited to ₹ 1,00,000, B's liability is limited to ₹ 2,00,000 and C's Liability is limited to ₹ 4,00,000. R makes the default of ₹ 4,00,000.

Based on the above provisions, A, B and C were liable for contribution subject to maximum limit fixed as per their specific bonds.

Therefore, A is liable to pay 1,00,000 rupees, and B and C ₹ 1,50,000 rupees each.

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

**Question 4**

(a) *With reference to provisions of the Indian Contract Act, 1872, analyse the given situations and answer each of the following questions:*

- (i) *Mr. X visited a Cosmo Mega Mall at Nagpur, which has a variety of items for day-to-day use. The mall has a self-service system. Mr. X took a basket, picked up ten different items of his choice, and reached the cashier for payments. The cashier accepted the price of nine items but did not accept the price of remaining one item which was at the highest price of ₹ 10,050/- among the ten items.*

*Decide as per the provisions of the Indian Contract Act, 1872 whether the Cosmo Mega Mall be compelled to sell the said article to Mr. X.*

**(4 Marks)**

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

**(3 Marks)**

- (b) *"Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery." Classify the different types of Negotiable instruments according to manner in which it is made as per the provisions of the Negotiable Instrument Act, 1881.*

**(7 Marks)**

- (c) *Define Law and explain various sources of Law.*

**(6 Marks)**

**Answer**

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

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

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

In this case, Mr. X by selecting some items and approaching the cashier for payment simply made an offer to buy the items selected by him. If the cashier does not accept the price, Mr. X cannot compel him to sell.

Accordingly, in view of the above, Mr. X cannot compel the Cashier / Cosmo Mega Mall to sell the 10<sup>th</sup> article.

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

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

In the given case, Mr. AT and Mrs. Priya had not entered into an agreement which is legally enforceable by law.

As per the facts of the case, Mr. AT agreed to pay to his wife Mrs. Priya ₹ 30,000 per month while he was abroad. Mr. AT failed to pay the promised amount. Mrs. Priya sued him for the recovery of the amount.

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



- (b) **Negotiable Instruments:** Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by endorsement and delivery.

The property in such an instrument pass to a Bonafide transferee for value.

**Classification of Negotiable Instruments according to manner in which it is made in terms of the Negotiable Instruments Act, 1881 (the Act).**

(1) **“Bearer Instrument” and “Order Instrument” [Section 13]**

**Bearer Instrument:** It is an instrument where the name of the payee is blank or where the name of payee is specified with the words “or bearer” or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

**Order Instrument:** It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.

(2) **“Inland Instrument” and “Foreign Instrument” [Sections 11 & 12]**

**“Inland Instrument”:** A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

**“Foreign Instrument”:** A foreign instrument is one which is not an inland instrument.

(3) **Inchoate and Ambiguous Instruments**

**Inchoate Instrument:** It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ endorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete.

**Ambiguous Instrument:** As per Section 17, where an instrument may be construed either as a promissory note or bill of exchange,

the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

**(c) What is Law?**

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

**Sources of Law**

The main sources of law in India are:

- (i) the Constitution,
- (ii) the Statutes or Laws made by Parliament and State Assemblies,
- (iii) Precedents or the Judicial Decisions of various Courts and in some cases, established Customs and Usages.

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

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

The Constitution also provides for and protects certain Fundamental Rights of citizens.

It also lays down Fundamental duties as well as the powers and duties of Governments, both Central and State.

The laws in India are interconnected with each other forming a hybrid legal system.

The people who wrote the Constitution decided to divide the law-making power between the Central Government and the various State Governments. So, the Indian Constitution has three lists Viz., Central List, State List and Joint List.

A matter would become the subject matter for Central Law or a State Law depending on the List.

**Question 5**

- (a) (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)**

- (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 17<sup>th</sup> 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)**

- (b) (i) *M/s SR Enterprises is a well-known trading firm. Mr. AM, a former partner of the firm, had retired in 2022 but never made any public announcement about his retirement. In 2024, Mr. R, a supplier, entered into a business transaction with M/s SR Enterprises believing that Mr. AM was still a partner in the firm. He relied on Mr. AM's past association with the firm and extended a credit line to the firm. When M/s SR Enterprises defaulted on payment, Mr. R, demanded that Mr. AM also be held liable for the dues. Mr. AM refused, stating that he was no longer a partner in the firm and had no involvement in the firm's affairs for long time. Examine with reference to the provisions of the Indian Partnership Act, 1932 whether Mr. AM can be held liable for the firm's above debt.*

**(3 Marks)**

- (ii) *M/s LMP & Associates, a partnership firm engaged in carpet manufacturing and exporting, was initially managed by senior partners L, M, and P. On 25<sup>th</sup> August, 2022, the firm admitted Mr. G, an expert in*

carpet manufacturing, as a partner. However, on 10<sup>th</sup> 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)**
- (c) *State with reference to the provisions of the Indian Contract Act, 1872 whether the following are True or False with justification.*
  - (i) *The pledge of documents of title to goods by a mercantile agent with the consent of an owner is invalid pledge.*
  - (ii) *A appoints B as his agent to sell A's land. Subsequently, under the authority of A, B appoints C as his agent. Later on, A revokes the authority of B, but not that of C. Consequently, the authority of C cannot be terminated.*
  - (iii) *The contract of life insurance is not fully covered under the contract of indemnity.* **(6 Marks)**

**Answer**

- (a) (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.

**(b) (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.

**(c) (i) The given statement is False**

**Justification:** According to Section 178 of the Indian Contract Act, 1872, a mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Provided such Pledge shall be valid as if were made with the authority of the owner of goods and the Pawnee has acted in good faith and has no notice that the Pawnor has no authority to pledge.

**(ii) The given statement is False**

**Justification:** According to Section 210 of the Indian Contract Act, 1872, the termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him. In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub agent. Thus, when A revokes the authority of B(agent), it results in termination of authority of sub agent appointed by B i.e. C (sub-agent).

**(iii) The given statement is True**

**Justification:** As per Section 124 of the Indian Contract Act, 1872, the term "Contract of Indemnity" is defined as "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other



person." In case of a contract of insurance, the loss may happen due to natural calamities, and not due to conduct of the promisor or any person. Thus, a contract of Life Insurance is not contracts of indemnity as per definition given.

**Question 6**

- (a) (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)**

- (ii) *A promissory note is made payable at a specific place on a fixed date. The holder, Mr. Mohan presents the note for payment two days after the due date because of unforeseen circumstances.*

*Decide each of the following as per the provisions of the Negotiable Instruments Act, 1881:*

- (A) *Does the delay in presentation affect Mr. Mohan's right to recover the amount?* **(2 Marks)**

- (B) *Under what circumstances can a delay in presentation be excused according to the Act.* **(2 Marks)**

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

- (i) *What do you mean by 'Fraud'?*
- (ii) *What would be effect of fraud upon validity of a contract and state the instances in which a contract is not voidable?* **(6 Marks)**

**OR**

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

- (c) *Contract of sale resembles with contracts of hire-purchase. However, sale is distinguished from hire-purchase. Explain hire-purchase agreement and state any five points of distinction between Sale and Hire-purchase.*

**(7 Marks)**

**Answer**

- (a) (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.

- (b) (i) **Meaning of Fraud: (Section 17 of the Indian Contract Act, 1872):**  
'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an

intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

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

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

- (1) He can rescind the contract within a reasonable time.
- (2) He can sue for damages.
- (3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

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

- (i) If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.
- (ii) A fraud which did not cause the consent of the party to agreement.

**OR**

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

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

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

**The claim for quantum meruit arises in the following cases:**

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

Hire Purchase Agreements are governed by the Hire-purchase Act, 1972.

The term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

- (a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and
- (b) The property in the goods is to pass to such person on the payment of the last of such instalments, and
- (c) Such person has a right to terminate the agreement at any time before the property so passes.

**The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:**

Basis of Difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser until he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.