Inter Law Examples

Part 1

Chapter 1 : PRELIMINARY

Example 3 : Reliance Industries Limited incorporated in 1973, Tata Steel Limited incorporated in 1907, Infosys Limited incorporated in 1981.Such companies incorporated under Companies Act, 1956 (previous company law) are also included in the above definition for being treated as a Company.

Example 4 : A shareholder who has paid rupees75 on a share of face value rupees100 can be called upon to pay the balance of rupees25 only.

Example 5: Reliance Industries Limited, a company incorporated in 1973, follows 1st January to 31st December as its financial year. Now after the commencement of Companies Act, 2013, Reliance Industries Limited is required to align its financial year as financial year ending as on 31st March of every year within 2 years from such commencement.

Example 6: X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. is not a government company as there is no compliance of minimum holding of paid-up share capital i.e. at least 51 % by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Government

Example 7: In a company, a default was committed with respect to the allotment of shares by the officers. In the company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such a situation, all the directors of the company may be treated as officers in default.

Example 8: A Pvt. Ltd. is a wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case, since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.The requirement of having a minimum paid up share capital shall not apply to a section 8 company vide

notification dated 5th June 2015. *Since nothing has been prescribed so far, thus, there is no minimum paid up share capital to form a public company.

Example 9: XYZ Pvt. Ltd. has two subsidiary companies, Y Pvt. Ltd. and Z Pvt. Ltd. Here as per the section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd. are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company. Therefore Y Pvt. Ltd and Z Pvt. Ltd are not related parties for the purpose of section 188. However, if Y Pvt. Ltd and Z Pvt. Ltd. have common directors, then they will be deemed to be related parties because of section 2(76)(iv).

Example 10: Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will be deemed to be a public company, so Y Pvt. Ltd and Z Pvt. Ltd will not be eligible to avail exemption under the Notification No. G.S.R. 464(E) dated 5th June, 2015. Therefore, as per section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd are related parties. In addition, XYZ Ltd. will also be a related Party to Y Pvt. Ltd and Z Pvt. Ltd.

Example 11: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to the extent of `1.50 crores; and paid up share capital was ` 40 lacs. Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a ‘small company’ it wants to be categorized as ‘small company’. S Pvt. Ltd. cannot be categorized as a ‘small company’ because it is the subsidiary of another company (H Ltd.). [Proviso to section 2(85)].

Example 12: ABC Ltd. was registered with Registrar with an Authorised capital of ` 2,00,00,000 where each share is of ` 10.In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for ` 8 per share.All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.Amount of various share capitalAuthorized share capital = ` 2,00,00,000 (2 crores) Subscribed capital = 10,00,000 x 10 = ` 1,00,00,000 (1 Crore) Issued capital = 7,00,000 x 10 = ` 70,00,000Called-up capital = 7,00,000 x 8 = ` 56,00,000Paid-up capital = 56,00,000 – (6000 x ` 8) = ` 55,52,000

Chapter 2 : INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Example 1: Rajesh has formed a ‘One Person Company (OPC)’ with his wife Roopali as nominee. For the last two years, his wife Roopali has been suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak

who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor

Example 2: Abha formed a 'One Person Company (OPC)' on 15th October, 2017 with her husband Akhil as nominee and Rs. 10 lacs as Authorised and paid-up share capital. In the month of April, 2018 she got in touch with a foreigner and is expecting to receive a substantial export order by May, 2018 whose final delivery must be completed by December, 2018. She is contemplating to convert her OPC into a private limited company before she receives the export order in May 2018. In this case, Abha cannot voluntarily convert her OPC into a private limited company before expiry of two years from 15-10-2017 i.e. upto 14th October, 2019.

Example 3 : Mr. Anil Desai, has applied for reservation of company name with a prefix "Sanwariya". He claimed that the Prefix "Sanwariya" is a registered trademark in his name. Later on, it is found that the said prefix is not registered with Mr. Anil Desai, however, he has formed company by giving incorrect documents/information while applying the name of the company.In such case, The Registrar shall take action as per the provisions of the act after giving opportunity of being heard.

Example 4: Section 47 of the Act deals with voting power of members. And a notification dated 5th June, 2015 says that section 47 is applicable to a private company subject to its Article of Association (AOA). Now if AOA of a private company says that section 47 is not applicable to it then, in this case AOA will become superior and section 47 of the Act will not be applicable.

Example 5: RPIP Ltd. has invested 51% in the shares of SSP Pvt. Ltd. on 31st March 2019. SSP Pvt. Ltd. have been holding 2% equity of RPIP Ltd. since 2013. SSP Pvt.Ltd. cannot increase its equity beyond that 2% on or after 31st March 2019. However, it could continue to hold or reduce its initial 2% stake.

Chapter 3 : PROSPECTUS AND ALLOTMENT OF SECURITIES

Example 1: The Board of Directors of Dr. Sunny Pharmaceutical Limited has allotted shares to the investors at large without issuing a prospectus with the Registrar of Companies, Mumbai. In this regard, it is to be noted that a public company can issue securities to the public only by issuing a prospectus (Section 23).

Example 2: A public limited company which wanted to raise funds through public issue of shares had applied for listing of its shares in three recognised Stock Exchanges. However, only two exchanges had given permission for listing. Can the company proceed with the public offer?

Answer: According to Section 40 (1) of the Companies Act, 2013, every company making a public offer of shares shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges. As per Section 40 (2), where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with. From the above it is clear that not only the company has to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer. In view of the above provisions, the company cannot proceed with the public offer of shares before obtaining the necessary approval from the stock exchanges.

Example 3: The Board of Directors of a company decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?

Answer: Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less. The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the Articles.

Example 4: After having received 80% of the minimum subscription as stated in the prospectus, Raksha Detective Instruments Limited, before finalisation of the allotment, withdrew 50% of the said amount from the bank for the purchase of certain assets. Thereafter, it started allotting the shares to the subscribers. Rashmi, one of the subscribers, was allotted 1000 equity shares. She, however, refused to accept the allotment on the ground that such allotment was violative of the provisions of the Companies Act, 2013.

Answer: According to the above example, Raksha Detective Instruments Limitedhas received only 80% of the minimum subscription as stated in the prospectus. Since the minimum amount has not been received in full, the allotment is in contravention of section 39 (1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Further, under section 39 (3), such a company is required to refund the application money received (i.e. 80% of the minimum subscription) to the applicants. Therefore, in the present case, Rashmi is within her rights to refuse the allotment of shares which have been illegally made by the company.

Example 5: An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under the circumstances?

Answer: Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such mis-statements. Certain situations when a director will not incur any liability for mis-statements in a prospectus are covered under exceptions provided by Section 35 (2) but no such exception specifies that relying on the statements prepared by the promoters of the company is a valid ground for a director to escape liability for mis-statement.

Example 6: All the statements contained in a prospectus issued by a company were literally true. It was also stated in the prospectus that the company had paid dividends for a number of years but there was no disclosure regarding the fact that the dividends were paid out of realised capital profits and not out of trading profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars.

Answer: The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Example 7: A prospectus issued by a company contained certain mis-statements. On becoming aware of the fact regarding mis-statements in the prospectus, one of the experts Anilesh who had earlier given his consent, forthwith gave a reasonable public notice stating that the prospectus was issued without his knowledge and consent. Is it possible for Anilesh to escape liability for mis-statement in the prospectus?

Answer: Section 35 (2) of the Companies Act, 2013 states that no person shall be liable under Sub-section (1) if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent. The case of Anilesh is covered under the above exception provided by Sub-section (2) and therefore, he will escape liability for mis-statement in the prospectus.

Example 8: M applies for equity shares of a company on the basis of a prospectus which contains mis–statement. The shares are allotted to him, who afterwards transfers them to N. Whether N can bring an action for a rescission on the ground of mis-statement under section 37 of the Companies Act, 2013?

Answer: No. N cannot bring an action for rescission of the contract for buying shares from M on the ground of mis-statement made in the prospectus. Section 37 of the Companies Act, 2013 does not become applicable in such a situation. It is noteworthy that according to Section 37, a suit may be filed or any other action may be taken under section 34 or section 35 or section 36 only by any person, group of persons or

any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus. Therefore, only M is eligible to file a suit.

Example 9: Ruhi and her younger brother Sohit were offered jointly 1000 equity shares of ` 100 each by Soumya Software Private Limited under the issue of shares on private placement basis. From whose account the company is required to take subscription money for 1000 equity shares?

Answer: According to the first Proviso of Rule 14 (5) of the PAS Rules, monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. It is presumed that Ruhi's name appears first in the application and therefore, the subscription of ` 1,00,000 shall be payable by her from her account. It is obligatory for the company to ensure that the money is paid from her bank account and not from the bank account of her younger brother Sohit.

Chapter 4 : SHARE CAPITAL AND DEBENTURES

Example 1: Sun Bakers Limited has authorised share capital of ` 50.00 lacs. The face value of each unit of capital or 'share' is ` 10. In this case, it can be said that the company has 5.00 lacs shares of ` 10 each. When these shares (either in part or whole) are allotted to various persons, they, on the date of allotment, become shareholders of the company.

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Example 3:Coriander Masale Limited has issued 10,00,000 equity shares of ` 10 each on which ` 6 per share has been called till allotment and the first and final call of ` 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of ` 10 per share. In the upcoming extraordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares. However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of the first and final call. The restriction will continue till the amount is duly called up by the company.

Example 4: A share having face value of ` 10 is issued at a price of ` 14. The amount over and above the face value of ` 10 is called premium. Where the issue price is lower than the face value of the shares, such issue of shares is regarded as being issued at discount and the differential amount is known as discount.

Example 5: A share having face value of `5 is issued at a lower price of ` 4. The differential amount of ` 1 is known as discount which is being allowed by the company.There

are precautionary provisions covered in Sections 52 and 53 for both these scenarios (i.e. premium or discount) to safeguard the issuer company and its stakeholders.

Example 6: During the current financial year, the Board of Directors of Vintee Lifestyles Garments Limited is to undertake redemption of 20,000 preference shares of ` 100 each at a premium of ` 20 per share. It is made out by the Accounts Department that the profits are sufficient to meet the ensuing liability arising out of redemption of preference shares at premium. In this case, the amount that needs to be transferred to Capital Redemption Reserve (CRR) account, if preference shares are redeemed at a premium out of profits which are otherwise available for dividend, is ` 20,00,000 being the sum equal to the nominal amount of the preference shares to be redeemed. There is no need to transfer to the CRR account any amount paid towards premium.

Example 7: Himanshu has received a notice from Chaitanya Progressive Books Private Limited on 7th August, 2019 intimating that Shefali has submitted a transfer deed duly signed by her for transfer of 500 partly paid shares (` 6 paid-up out of Face Value of ` 10 per share) in his name. Himanshu as transferee must raise his objection to the proposed transfer of partly paid shares latest by 21stAugust, 2019.

Example 8: R icha Daniel, after having obtained succession certificate, succeeded to 7,000 shares of ` 100 each allotted to her late father Alexander Daniel by Speed Software Limited. To pay off the debt of her cousin Stesley, she wants to transfer the whole of the 7,000 shares to her on the basis of a duly stamped instrument of transfer which has been signed by her as well as Stesley. Accordingly, she has delivered the required documents to the company for transfer of shares.In terms of Section 56 (5), the company, on receipt of duly stamped instrument of transfer along with requisite share certificates and succession certificate, shall transfer the shares in favour of Stesley. Thus, even though Richa Daniel, the legal representative of Alexander Daniel, is not a holder of 7,000 shares as per the Register of Members of the company, the transfer effected by her in favour of her cousin Stesley is a valid transfer as if she had been the holder of securities at the time of executing the transfer deed.

Note:As an alternative,
Richa Daniel may choose to get herself registered as holder of the 7,000 shares in which case, she will make an application to Speed Software Limited. Such application shall be accompanied with share certificates and succession certificates. There is no need to submit an instrument of transfer or transfer deed in such a case of transmission. This is so because the transfer deed cannot be signed by the deceased person as transferor. On receipt of these documents, the company will scrutinize them and if found in order, it shall proceed to enter the name of Richa Daniel in the Register of Members. Consequently, the name of the deceased person i.e.Alexander Daniel shall be deleted. Further, new share certificates will be issued in the name of Richa Daniel, the legal representative of Alexander Daniel.

Example 9: If a company announces ‘1:10 rights issue’, it means an existing shareholder can buy one extra share for every ten shares held by him/her. Usually the price

at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock to encourage subscription

Example 10: A company, listed at Bombay Stock Exchange, intends to offer its new shares to the non-members. The existing members of the company consider such offer as invalid in view of the provisions contained in Section 62 (1) (a). However, the company is not prohibited in absolute terms while offering new shares to the non-members. It can do so after fulfilling the conditions given in Section 62 (1) (c). Thus, new shares of a company limited by shares may be issued to non-members under certain circumstances.

Example 11: XYZ Limited declares bonus shares in the ratio of 1:5. I t means an existing shareholder of the company, say Mr. 'R', will get one bonus share free of cost for every five shares already held by him. The larger the holding of any shareholder, the more bonus shares he will get in comparison to others.

Example 12: In respect of a share of ` 10, a company has called only ` 7per share and the same has been paid by all the shareholders. The company decides not to call the remaining ` 3 per share and reduces its shareholders liability. If done, the company is said to have reduced its share of ` 10 to `7 as fully paid-up share

Example 13: The name '10% Debentures' indicates that the company shall pay interest at the rate of 10% on the outstanding amount till maturity of such debentures

Example 14: Sigma Computers Limited desires to borrow ` 50,00,000 from the public by issuing 7% Debentures. It is intended that each unit of debenture shall be of ` 100. Thus, it can issue 50,000 debentures of ` 100 each carrying a 7% rate of interest which can be paid at the end of every quarter. If such debentures (secured by a charge on the assets of the company) are issued for six-year duration, the principal amount shall be repaid by the end of sixth year. The terms of issue may even allow repayment of principal amount in equal yearly instalments, in which case a portion of debentures shall be redeemed on yearly basis and the company shall be required to pay interest only on the outstanding amount. The debenture holders may also be given the option of converting their debentures into equity shares at the time of maturity. Thus, Sigma Computers Limited is able to borrow a large sum of money from different borrowers with the help of debentures and it is not required to approach a single borrower for such a big amount. In other words, 'issue of debentures' is the most convenient way of borrowing large sums of money and at the same time the debenture holders do not exert any influence over the ownership and working of the company unless their interest is jeopardized by certain decisions.

Chapter 5 : ACCEPTANCE OF DEPOSITS BY COMPANIES

Example 1: Soorya Ltd. has raised ` 2,00,000 through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.The said amount will not be considered as deposit in terms of the rule stated above [Sub-clause (ixa)

Example 2:` 2,50,000 received from Mr. Raghu, an employee of the company who is drawing an annual salary of ` 2,00,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee Mr. Raghu will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.

Example 3:A, a member of the company has deposited ₹1,00,000 with his company on 1st April, 2019. The earliest repayment date in this case shall be 30th September, 2019 and the latest repayment date shall be 31st March, 2022.Thus, the tenure will range between six months and thirty-six months, as per the policy of the company.

Example 4 : A, B and C have jointly deposited ` 1,00,000 in a company. •In case of 'Jointly' clause the repayment of deposit on maturity shall be made to all the three together i.e. A, B and C or the survivors. •In case of 'Either or Survivor' clause, the repayment of deposit on maturity shall be made to either of the three i.e. either A or B or C or the survivor. •In case of 'First named or Survivor' clause, the repayment of deposit on maturity shall be made to the first named person i.e. A if he is the first named person or the survivor. •In case of 'Anyone or Survivor' clause, the repayment of deposit on maturity shall be as in the case of 'Either or Survivor'.

Chapter 6 : REGISTRATION OF CHARGES

Example 1: Vishnu Marketing Limited obtained a term loan of ` fifty lacs from Beta Commercial Bank Limited by creating a charge on one of its office buildings and the charge was duly registered. Later on, if the building is sold to Neeraj, he is deemed to have noticed such a charge. In other words, it is presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan. He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

Example 2: A retail showroom will contain numerous articles kept for sale. The owner of the showroom might have borrowed against the security of all those goods in the showroom. But he may still sell or otherwise deal with them in the ordinary course of business. The buyer will get it free of charge.

Example 3: In case of a company which manufactures leather goods, the raw material in the form of leather, which is subject matter of floating charge, may be used to manufacture leather goods without seeking any permission from the lender.

Example 4: Bank A has advanced Rs. One Crore to Akash Limited against the security of the company's land and building at Mulund. The charge was created by deposit of title deeds on 1st June 2019. The company did not register the charge within 30 days. Subsequently, the charge was registered on 13th August 2019 after payment of ad valorem fees and proving sufficient cause. In the meantime, Bank B has advanced Rs. Two Crore to Akash Limited against the security of the same property on 20th June 2019. This charge was duly registered on 27th June 2019.Subsequently, Akash Limited goes into liquidation and the property realises only Rs. Two crores. Now, Bank B will receive its loan back fully, but Bank A will not realise anything. Because, the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later.

Chapter 7 : MANAGEMENT & ADMINISTRATION

Example 1 Mr. Zoey purchased the shares of Luxy Hairstyles Private Limited, at market price, in the name of his daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the updation of said change in the register of members, since Mila, being a minor is incompetent to contract in her capacity.

Answer: Since, the minors are not competent to enter into any contract, thus their names cannot be entered in the register of members. Therefore, Mr. Joe is advised that while filing MGT – 1 and MGT – 2, the names of the minor can only be entered only if the details of the guardian are present. Thus, Zoey's name shall appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Example 2Mrs. And Mr. Taneja, recently got married and jointly purchased the shares of New Hopes India Private Limited on 14th August 2018. Mr. Taneja intimated the company that only the name of his wife should appear in the records of the company, for the shares purchased by them. The secretary of the company is not sure whether this is possible, given that the shares are held in the names of both the persons.

Answer: Joint holders of shares may request the company to enter their names on the register in a certain order, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition of Mr. Taneja that only the name of his wife should appear in the register as a member cannot be catered to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this

purpose, seniority shall be determined by the order in which the names stand in the register of members.

Example 3 Ms. Emma gifted the shares purchased by her of the Company Bio-Optics Limited, to her sister Cathy. Emma had purchased these shares on the occasion of her birthday in February 2019. However, neither Emma nor Cathy were aware that they had to intimate about the transaction of transfer of such shares as a gift, to the company. Discuss the same in light of the provisions of section 89 of the Act.

Answer: The provisions of section 89 of the Act, dealing with declaration of beneficial interest in shares by a person to the company, does not apply in a civil suit where the title of the shares is in dispute. In Khajamiya Miransaheb Mujahid v. Peerapasha Miransaheb Mujahid (1987) (Kar.), where the shares are gifted away, they become the property of the donee. Hence, the provisions relating to declaration of beneficial interest are not applicable.

Example 4 Big Fox Private Limited called it's Annual General Meeting on 30th September, 2018 for laying down the financial statement for approval of its shareholders' for the financial year ended 31st March 2018. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements or the annual return for the year ending March 2018, with the RoC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.

Answer: The director is incorrect in holding that there is no contravention of the provisions of the Companies Act, 2013. Section 92 states that every company has to file an annual return with the RoC in Form MGT – 7 within 60 days of the date on which the annual general meeting was held or the date when it must have been held. In the above case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2018, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92(5) of the Act.

Example 5Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr.Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.

Answer: As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via email.

Example 6 There are 54 members of Dicey Private Limited. The company held its annual general meeting on 1st July 2019 at 2:00 p.m. and 28 members were present till 2:30 p.m. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

Answer: As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a meeting of the companyThus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.

Example 7 Abbey Limited has 2300 members and the annual general meeting of the company is to be held on 23rd February 2019 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Answer: In the above case, while the appropriate quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, the quorum was not present at the time of deciding Agenda 4 & 5. It has been held that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Example 8 What happens in case of voting by joint shareholders? Suppose that Mr. & Mrs. Iyer are joint shareholders of Goal Private Limited and they hold 500 shares of the company. Regarding a particular special business being transacted at the extra-ordinary general meeting of the company, Mr. Iyer is in favour of the decision, whereas Mrs. Iyer is against the resolution. Decide how should the vote be casted in case of this situation?

Join shareholders must concur in voting unless the articles provide to the contrary.The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

Example 9 Consider a situation where directors are also the shareholders of the company? Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director should vote as a common shareholder would vote in a general meeting, and need not be influenced by the fact of his being a director.

Example 10 Can an insolvent shareholder vote at the meeting by show of hands?
Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

Example 11 How does the counting happen at the time of postal ballot?
It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes in the same way. Therefore, 4 types of ballots may be received from the shareholders– (i) Ballots which contain assents;(ii) Ballots which contain dissents;(iii) Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and (iv)Invalid ballots (due to absence/ mismatch of signature, overwriting, etc.)

Example 12 In the annual general meeting of Black Mango Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.Where notice has been given of several resolutions, each resolution must, be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be material.

Example 13 The extra-ordinary general meeting of the company, Purple Banana Private Limited was due to be held on 23rd September 2019. However, due to want of quorum, the meeting was adjourned to a later date on 1st October 2019 and two resolutions were passed on that date. Now, as per section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the original date of meeting, i.e. 1st October 2019 and not on the earlier date

Example 14 •Abbeys Private Limited closed its financial year on 31st March 2019. According to section 96(1) of the Act, the Company should hold its annual general meeting for the year 2018-19 by 30th September 2019 unless an extension is granted by RoC on special reasons.•Abbyrush Limited was incorporated on 11th December 2018. When should the company hold its AGM? According to section 96(1), the company's financial year will close on 31st March 2019. The company may hold its first AGM by 31st December 2019, i.e. within 9 months of the close of its financial year.

Example 15

1. The Board of directors of Illusions Private Limited, a company registered in New Delhi, has decided to call an EGM in Madrid, Spain on 2nd October 2018. Discuss whether the general meeting can be convened on the said date.No, the meeting cannot be convened in the manner as stated in the facts of the question. As per Rule 17(2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting in the registered office of the company or in the same city or town in which the registered office is situated and it should be a working day.

2. The members of the Blumove Peacocks Private Limited, holding 1/10th voting power of the company, requisitioned a meeting on 14th August, 2018 to the Board of Directors. However, the directors did not pay any heed to such a requisition and did not call an extraordinary meeting. Discuss the consequences of the contravention of the same in accordance with the Companies Act, 2013.Where the Board, after the receipt of the requisition, does not within 21 days call for a meeting within 45 days of the date of requisition, then the requisitionists may themselves call and convene the meeting.

Chapter 8 : DECLARATION AND PAYMENT OF DIVIDEND

Example 1: AB Ltd. has issued equity shares having face value of ` 10 per share. The shares are currently quoting on the NSE at ` 250/- per share. The Company at its AGM held on 27.7.20 has declared a dividend of 20%. Mr. Shekar owns 1000 shares which he purchased at ` 300/- per share. What is the amount of dividend he will receive?The dividend is to be calculated on Face Value i.e. ` 10/-. So dividend per share is 20% of ` 10/- = ` 2/- per share. So Mr. Shekar will receive ` 2 * 1000 shares = ` 2000/-.

Example 2: The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution. Articles of Association companies usually contain provisions with regard to declaration of dividend on the pattern of regulations 80 to 85 of Table F toSchedule I of the Companies Act, 2013. Under regulation 80, the power to declare a dividend vests with the general meeting, But not even all the shareholders have the power to declare a dividend exceeding the amount recommended by the Board of Directors

Example 3: If a company declared dividend at the rate of 16% during the immediately preceding three financial years, then in case the company incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 16%. ♦The amount of the dividend, including interim dividend, shall be deposited in a separate account maintained with a scheduled bank within five days from the date of declaration. ♦All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

Example 4:Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ` 20,00,000. The Board of Directors is keen to utilize this ` 20,00,000 along with free reserves of ` 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2019. But according to Proviso to Section 123 (1) (a), the amount of ` 20,00,000 cannot be considered as it does not form part of Free Reserves as the same cannot be utilized towards declaration of dividend.

Example 5: For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

Answer: The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit

Example 6: Brix Shipyards Limited has earned a profit of ` 1,000 crores for the financial year 2018-19. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

Answer: The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any amount of profits to the reserves.

Example 7: Capricorn Industries Limited has a paid-up capital of ₹ 200 lakhs and accumulated Reserves of ₹ 240 lakhs. Loss for the year ending 31st March 2020 is ₹ 30 Lakhs. Dividend was declared at the following rates during the three years immediately preceding.

Year 1	**9%**
Year 2	**10%**
Year 3	**12%**

What is the maximum rate at which the company can declare dividend for the current year.

Answer: In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Let us apply the conditions:

Condition I:

$$\frac{9+10+12}{3} \text{ Average rate } = = 10.3\%$$

Therefore, the rate of dividend shall not exceed 10.3%.

i.e. 10.3% of Paid up Capital i.e. ₹ 200 lakhs = ₹ 20.6 lakhs

Condition II:

Paid-up capital + Free reserves	= ₹ (200+240) Lakhs	
(Assuming all reserves are free)=		₹ 440 Lakhs
10% thereof	=	₹ 44 Lakhs
Less: loss for the year	=	₹ 30 Lakhs
Amount available =		₹ 14 Lakhs

Hence the quantum of dividend is further restricted to ₹ 14 lakhs.

Condition III:

Accumulated Reserves	₹ 240 Lakhs
Proposed withdrawal declaration of dividend	₹ 14 Lakhs
Balance of Reserves	₹ 226 Lakhs

This is more than 15% of paid-up capital (i.e 15% of ₹ 200 Lakhs) i.e. ₹ 30 lakhs.

Thus, the company can declare a dividend of ₹ 14 lakhs i.e. at a rate of 7% on its paid-up capital of ₹ 200 lakhs.

Example 8: Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March, 2020, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2019-20, as per the provisions of the Companies Act, 2013.

Answer The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

•The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

•The amount drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.

•After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

Example 9: The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is ` 50.00 lacs divided into 5,00,000 equity shares of ` 10 each. At its Annual General Meeting (AGM) held on 24th September, 2019, the company declared a dividend of ` 2 per share by passing an ordinary resolution. The amount of dividend must be deposited in a scheduled bank in a separate account latest by 29th September, 2019.

Example 10: The Directors of East West Limited proposed a dividend of 15% on equity shares for the financial year 2018- 2019. The same was approved in the Annual general body meeting held on 24th October 2019. The Directors declared the approved dividends. Binoy was the holder of 2000 equity shares on 31st March, 2019, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2019. Who will be entitled to the above dividend ?

Answer: Dividend shall be payable only to the registered shareholder or to his order or banker. In this case Mr. Binoy is the registered shareholder and therefore there shall be sufficient compliance with the law if the company pays the dividend to Mr. Binoy.

Example 11: The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2019-20. The same was approved at the Annual General Meeting of the company held on 25th June, 2020. Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2020, but the same were transferred by him to Mr. Raj, whose name was registered on 20th April, 2020 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

Answer: According to section 123(5), dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker. Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April, 2020. Since, Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June, 2020, he will be entitled to the dividend.

Note: In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only ` 5 (face value ` 10) on each share held by them. In case of declaration of dividend at the rate of ` 5 per share, the company, if authorised by its articles, shall be justified in paying dividend of ` 2.50 per share in respect of such partly paid shares.

Example 12: Mr. Alok, holding equity shares of face value of 10 lakhs, has not paid ` eighty thousand towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

Answer: Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues. Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to ` eighty thousand is justified and therefore, no punishment is attracted.

Chapter 9 : Accounts of companies

Example 1: XYZ Ltd. wants to maintain its books of account on a cash basis. Is this a valid act of XYZ Ltd?

Answer: The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statements for every financial year on accrual basis and double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of accounts on a cash basis.

Example 2: Mahindra and Mahindra Company Limited was incorporated as a company on 22nd February 2014. Now for the purpose of the first financial statements, the period ending shall be 31st March of the following year i.e. 31stMarch 2015.

Example 3: The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer:Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of: (a) any notes annexed to or forming part of such financial statement; (b) the auditor's report; and (c) the Board's report. It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable

Example 4: ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Answer: In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. So, the financial statements signed by one director shall be considered in order

Example 5: The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2018 computed as per the provision of section 2(57) of the Companies Act, 2013.The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

Answer: As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fairvalued its property, plant and equipment and took that to retained earnings.Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in

reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

Example 6: ABC Ltd is a company with a turnover of more than Rs.1000 crores and having incurred a loss in one of the preceding three financial years. Will it be required to comply with CSR?

Answer: As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to comply with the CSR provisions. Hence ABC Ltd. will be required to comply with CSR based on its turnover. The mere fact that a company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Example 7 : ADV Ltd. is engaged in the business of construction and has various projects which are under execution in Delhi-NCR region. The company is also looking for new projects, particularly in the Southern part of India based on an understanding that the margins are very high over there.During the year ended 31st March 2018, the company got covered within the requirements of CSR. Considering the nature of its business, the company has a large employee base and it decided to spend CSR on some activity related to construction which would benefit its employees and would indirectly also help the business of the company. Please advise on this.

Answer: As per the requirements of CSR, the projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act. Accordingly, in the given case, the activity planned by the company is related to its business only and that too only for the benefit of its employees would not be considered as part of CSR requirements.

Example 8: Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiary located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Answer: No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statements of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136.

Example 9: AmazonCompany Limited, a company incorporated under the Companies Act, 2013, has a turnover of Rs. 150 crores and Rs. 90 crores during the financial year ended 31st March 2019 and 31st March 2020 respectively. Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2020 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

Example 10: Vandana Ltd., based out of India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2019, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent deals with this financial statement.

Answer: Vandana Ltd. would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation. Further as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.Further the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Example 12: Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2018 but the same were not adopted by the shareholders?

Answer: Since the AGM has been held in time on 27 September 2018, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

Example 13: Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and has its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co LLP, as its internal auditors for the year ended 31st March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

Answer In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co LLP.

Chapter 10 : AUDIT AND AUDITORS

Example 1: Rashail Techlabs Private Limited incorporated during the financial year 2019-20. First AGM of the company was held on 30.09.2020. The company appointed M/s. Rams & Associates, Chartered Accountant firm for the period of 5 Years as a subsequent statutory auditor

Example 2: Audit Committee recommended KPM & Associates, Chartered Accountants firm for appointment as statutory auditor to the board of Surya Solar Limited. However, board of the company disagreed with the recommendation of the audit committee. In such condition, board shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement

Example 3 : XYZ Ltd. which is a listed company appoints individual Mr. Raghav as an auditor in its AGM dated 29th September, 2016. Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2021. Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor in XYZ Ltd. upto year 2026

Example 4: XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016. M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021. Now as per sub-section (2), M/s Raghav & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year 2026. It shall not be re-appointed as Audit firm in XYZ Ltd. for a further term of five years from 2026 to year 2031.

Example 5: M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods of 5 years i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam is the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After 5 years, Golden Smith Ltd. may appoint M/s Kukreja & Associates or M/s . Krishna & Associates as its auditors.

Example 6: Unicorn Steel Private Limited is incorporated as on 02.06.2020,board of directors of the company held board meeting as on 15.06.2020 to appoint Jain Ajmera & Associates as a first auditor of the company for a term of 5 years. As per section 139(6) of the companies act, 2013, the board shall appoint the first director within 30 days from the date of registration of the company. State the validity of the aforesaid situation.(a)Invalid

(b)Valid(c)Valid after approval of shareholder in General Meeting(d)Valid only after approval of Central Government

Answer: The given situation is Invalid i.e. option (a)(b)If the Board fails to exercise its powers i.e. appointment of first auditor, it shall inform the members of the company and the company may appoint the first auditor within 90 days at an extraordinary general meeting (EGM) and such auditor shall hold office till the conclusion of the first AGM.

Example 7: Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

Answer: Provisions and Explanation:Section 139(6) of the Companies Act, 2013 provides that “the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company”. In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

Conclusion: In view of the above, the Managing Director of PQR Ltd. cannot appoint the first auditor of the company himself.

Example 8: Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2019. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2019 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor. In the present case, as the auditor has resigned, the casual vacancy created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

Example 9 : Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in the General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as an auditor in his place. The first auditor appointed by the Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor in this case is invalid. The company contravened the provision of the Act.

Example 10: FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crores. During the year ended 31st March 2019, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Governmentthat the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer: The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

Example 11: Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2018 in which he accepted the assignment. Subsequently, in January 2019, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Answer: Provisions and Explanation: Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Anil is auditor of M/s Laxman Ltd. and any employee of Laxman Ltd. cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated the office of the auditor of M/s Laxman Ltd.

Example 12: “Mr.Ashish”, a practicing Chartered Accountant, is holding securities of “XYZ Ltd.” having face value of₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of “XYZ Ltd.”?

Answer: As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:In the present case, Mr. Ashish holds a security of ₹ 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of “XYZ Ltd”.

Example 13: “Mr. P” is a practicing Chartered Accountant and “Mr. Q”, the relative of “Mr. P”, is holding securities of “ABC Ltd.” Having face value of ₹90,000/-. Whether “Mr. P” is qualified for being appointed as an auditor of “ABC Ltd.”?

Answer:As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per provision to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding ₹1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹90,000 face value in ABC Ltd., which is as per requirement of provision to section 141 (3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Example 14: “BC & Co.” is an audit firm having partners “Mr. B” and “Mr. C” and “Mr. A”, relative of “Mr. C”, is holding securities of “MWF Ltd.” having face value of ₹1,01,000. Whether “BC & Co.” is qualified for appointment as auditor of “MWF Ltd.”?

Answer:As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per provision to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding ₹1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i). (B) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹5 Lacs; or(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lac.

Example 15: “ABC & Co.” is an audit firm having partners “Mr. A”, “Mr. B” and “Mr. C”, Chartered Accountants. “Mr. A”, “Mr. B” and “Mr. C” are holding appointment as auditors in 4, 6 and 10 companies respectively.

(i) Provide the maximum number of audits remaining in the name of “ABC & Co.”

(ii) Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

Fact of the Case: In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

Provisions and Explanations: As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crores.

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall

ceiling will be 3 × 20 = 60 companies audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

Conclusion:

(i) Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Total Number of audits for which the firm would be eligible = 20*3 = 60

Number of audits already taken by all the partners

In their individual capacity = 4+6+10 = 20

Remaining number of audits available to the firm = 40

(ii) With reference to above provisions, an auditor can hold more appointment as auditor = ceiling limit as per section 141(3)(g)- already holding appointments as an auditor. Hence

(1) Mr. A can hold: 20 – 4 = 16 more audits.

(2) Mr. B can hold 20 - 6 = 14 more audits and

(3) Mr. C can hold 20-10 = 10 more audits.

Note:

It has been assumed that the companies given in the question are not one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹100 crore.

Example 16: SHRD Private Ltd is engaged in the business of software and consultancy. The company has an annual turnover of INR 2,000 crores but its profit margins are not very good as compared to the industry standards. For the financial year ended 31st March 2019, the company proposed appointment of its statutory auditors at its Board meeting, however, the remuneration was not finalized. The statutory auditors completed the engagement formalities including the engagement letter between the company and the auditors and it was decided that the engagement letter be signed without fee i.e. with the clause that the fee be mutually decided. In this situation, engagement letter with such arrangement is valid

Example 17: MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded. During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which the audit has not been concluded. Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer: In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit this additional information.Hence the auditor should conclude the work without delaying because of this additional information.

Example 18: NSH Ltd is engaged in the business of retail and is listed on the National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspect transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor dealt with such matters?

Answer: The auditors need to report about this matter appropriately in their CARO report.As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government

Example 19: MNP Ltd is a medium-sized company engaged in the business of pharmaceuticals. For the year ended 31st March 2018, the company is looking for appointment of GST (Goods and Services Tax) auditor. The company wants to appoint somebody for this work who is familiar with the business of the company i.e. who would have worked with the company in the past so that lesser efforts are required to get the GST audit completed. The company has options of Statutory auditors that can be appointed for this work for betterment of the company.

Part 2

Chapter 1 : THE INDIAN CONTRACT ACT, 1872

Unit 1 : Contract of Indemnity and Guarantee

Example 1: Mr. X contracts with the Government to return to India after completing his studies at University of Cambridge and serve the Government for a period of 5 years. If Mr. X fails to return to India, he will have to reimburse the Government. It is a contract of indemnity.

Example 2: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of ` 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

Example 3: X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. Here, there is contract of indemnity between X and the company

Example 4: X may agree to indemnify Y for any loss or damage that may occur if a tree on Y's neighboring property blows over. If the tree then blows over and damages Y's fence, X will be liable for the cost of fixing the fence.

Example 5: A asks B to beat C promising to indemnify him against the consequences. The promise of A cannot be enforced. Suppose, B beats C and is fined`1000, B cannot claim this amount from A because the object of the agreement is unlawful. A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.

Example 6: A promises to compensate X for any loss that he may suffer by filling a suit against Y. The court orders X to pay Y damages of Rs. 10000. As the loss has become certain, X may claim the amount of loss from A and pass it to Y

Example 7: When A requests B to lend ` 10,000 to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he (A) will himself pay to B, there is a contract of guarantee. Here, B is the creditor, C the principal debtor and A the surety.

Example 8: Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee.

Example 9: X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon R to Y, and agrees that if Y fails to pay he will. In case of Y's failure to pay, the car showroom will recover its money from X. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.

Example 10: B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A 's promise to deliver the goods. As per Section 127, there is a sufficient consideration for C's promise. Therefore, the guarantee is valid

Example 11: A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

Example 12: A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Example 13: A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C, with his previous conduct. B afterwards make default. The guarantee is invalid.

Example 14: A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay ` five per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety

Example 15: A guarantees payment to B of the price of the five bags of rice to be delivered by B to C and to be paid for in a month. B delivers five bagsto C, C pays for them. This is a contract for specific guarantee because A intended to guarantee only for the payment of price of the first five bags of rice to be delivered one time [Kay v Groves

Example 16: On A's recommendation B, a wealthy landlord employs C as his estate manager. It was the duty of C to collect rent on 1st of every month from the tenant of B and remit the same to B before 5th of every month. A, guarantee this arrangement and promises to make good any default made by C. This is a contract of continuing guarantee.

Example 17: A guarantees payment to B, a tea-dealer, to the amount of `100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of ` 100, and C pays B for it. Afterwards B supplies C with tea to the value of ` 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of ` 100.

Example 18: A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Example 19: A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

Example 20: A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Example 21: A run promises to pay Rama for all groceries bought by Carol for a period of 12 months if Carol fails to pay. In the next three months, Carol buys ` 2000/- worth of groceries. After 3 months, Arun revokes the guarantee by giving a notice to Rama. Carol further purchases ` 1000 of groceries. Carol fails to pay. Arun is not liable for ` 1000/- of purchase that was made after the notice but he is liable for ` 2000/- of purchase made before the notice.

Example 22: A guarantees to B, to the extent of ` 100,000, that C shall pay all the bills that B shall draw upon him. B draws the bill upon C. C accepts the bill. A gives notice of revocation after the bill is drawn and accepted. C dishonors the bill at maturity. A is liable upon his guarantee.

Example 23: X gives guarantee to the extent of ` 50,000 for the loans given from time to time by A to B. A gave a loan of ` 10,000 to B. Afterwards, X gives notice of revocation. X is discharged from all liability to A for any loan granted after the revocation of guarantee but he is liable to A for` 10,000 on default of B.

Example 24: A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

Example 25: A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

Example 26: C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

Example 27: A gives to C a continuing guarantee to the extent of ` 3,00,000 for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the

knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

Example 28:C contracts to lend B ` 5,00,000 on the 1st March. A guarantees repayment. C pays the ` 5,00,000 to B on the 1st January. A is discharged from his liability, as the contract has been varied, in as much as C might sue B for the money before the 1st March.

Example 29: A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Example 30: A gives a guarantee to C for goods to be delivered to B. Later on, B contracts with C to assign his property to C in lieu of the debt. B is discharged of his liability and A is discharged of his liability.

Example 31: C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged

Example 32: B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Example 33: C contracts with B to build a ship the payment of which is to be made in installments at various stages of completion. A guarantee's C's performance. B prepays last two installments. A is discharged of his liability.. A is discharged by this prepayment.

Example 34: A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see that M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Example 35: A engages B as a clerk to collect money for him, B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

Example 36: A guarantees to C payment for iron to be supplied by him to B for the amount of ` 2,00,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Example 37: B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable

grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt

Example 38: B is indebted to C and A is surety for the debt. Upon default, C sues A. A defends the suit on reasonable grounds but is compelled to pay the amount. A is entitled to recover from B the cost as well as the principal debt. In the same case above, if A did not have reasonable grounds for defence, A would still be entitled to recover principal debt from B but not any other costs.

Example 39: A guarantees to C, to the extent of 2,00,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,00,000 rupees, but obtains from A payment of the sum of 2,00,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Example 40: C advances to B, his tenant, 2,00,000 rupees on the guarantee of A. C has also a further security for the 2,00,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

Example 41: C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

Example 42: A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives the up the further security, A is not discharged

Example 43: A, B and C are sureties to D for the sum of 3,00,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,00,000 rupees each.

Example 44: A, B and C are sureties to D for the sum of 1,00,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one- half. E makes default in payment. As between the sureties, A is liable to pay 25,000 rupees, B 25,000 rupees, and C 50,000 rupees.

Example 45: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 3,00,000 rupees. A, B and C are each liable to pay 1,00,000 rupees.

Example 46: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 4,00,000 rupees; A is liable to pay 1,00,000 rupees, and B and C 1,50,000 rupees each.

Example 47: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 7,00,000 rupees. A, B and C have to pay each the full penalty of his bond.

UNIT–2: BAILMENT AND PLEDGE

Example 1 : Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

Example 2: X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment.

Example 3: Goods given to a friend for his own use, without any charge.

Example 4: X delivers goods to blue dart for carriage.

Example 5: A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

Example 6: A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

In Hyman & Wife v. Nye & Sons (1881), A hired from B a carriage along with a pair of horses and a driver for a specific journey. During the journey a bolt in the under-part of the carriage broke away. As a result of this, the carriage became upset and A was injured. It was held that B was liable to pay damages to A for the injury sustained by him. The court observed that it was the bailor's duty to supply a carriage fit for the purpose for which it was hired.

Example 7: A hired a taxi from B for the purpose of going to Gurgaon from Noida, during the journey, a major defect occurred in the engine. A had to pay ` 5000 as repair charges. These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc. are to be borne by the bailee itself.

Example 8: X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.

Example 9: If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot]

Example 10: A deposited his goods in B's warehouse. On account of unprecedented floods, a part of the goods were damaged. It was held that, B is not liable for the loss (Shanti Lal V. Takechand)

Example 11: A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

Example 12: 'A' hires a horse in Kolkata from B expressly to march to Varanasi. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to B for the injury to the horse.

Example 13: A lends to B, a horse for his own riding. B gives the horse to C for riding. This contract is voidable at the option of A, bailor.

Example 14: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage

Example 15: A bails a barrel of Cape flour worth ` 4500 to B. B, without A's consent, mixes the flour with country flour of his own, worth only ` 2500 a barrel. B must compensate A for the loss of his flour.

Example 16: X delivered books to Y to be bound. Y promised to return the books within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.

Example 17: A leaves a cow in the custody of B. The cow gives birth to a calf. B is bound to deliver the calf along with the cow to A

Example 18:A, while going out of station delivered his ornaments to B for safe custody for one month. But A returned to station after one week. He may demand the return of his ornaments even though the time of one month has not expired.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.

Example 19: A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the "combine" to any one of the joint owners namely, A, B or C.

Example 20: A, a dealer in T.V. delivered a T.V. to B for using in summer vacation. Subsequently, C claimed that the T.V. belonged to him as it was delivered only for repairs, to A and thus, B should deliver it to him. In this case, B may apply to the

Court to decide the question of ownership of the T.V. so that he may deliver it to the right owner.

Example 21: A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

Example 22: A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

Example 23: 'A' borrows ` 500/- from the bank without security and subsequently again borrows another `1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned `1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid

Example 24: A lends money to B against the security of jewellery deposited by B with him. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor/ pledger and A is a pawnee/ pledgee.

Example 25: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.

Example 26: Mr. X finds a defective mobile phone lying on the road. He picks it up, gets it repaired for Rs. 5000. He later pledges the mobile phone for Rs. 2000. The true owner can recover the mobile phone only on paying Rs. 5000

Example 27: A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to A, and acted in good faith. This is valid pledge.

UNIT–3: AGENCY

Example 1: P appoints Q, a minor, to sell his car for not less than ` 2,50,000. Q sells it for ` 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.

Example 2: A is residing in Delhi and he has a house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house. Agency is created by express agreement.

Example 3: If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.

Example 4: If a person realises rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

Example 5: A owns a shop in Selampur, living himself in Kolkata and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an impliedauthority from A to order goods from C in the name of A for the purposes of the shop.

Example 6: A consigns goods to B for sale and gives him instructions not to sell below a fixed price. C being ignorant of B's instruction enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract. A cannot plead that he had given instructions to B to not sell the goods below certain price. An agency by estoppel is,consequently, deemed between A and B.

Example 7: If Piyal (the principal) has for several months permitted Sunil to buy goods on credit from Prasad and has paid for the goods bought by Sunil, Piyal cannot later refuse to pay Prasad who had supplied goods on credit to Sunil in the belief that he was Piyal's agent and was buying the goods on behalf of Piyal. Piyal is estopped from now asserting that Sunil is not his agent because on earlier occasions he permitted Prasad to believe that Sunil was his agent and Prasad had acted in that belief

Example 8: Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is a huge fire on the farm. Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.

Example 9: X who is Y's agent has on 10th January 2020 purchases goods from Z on credit without Y's permission. After the purchase, on 20th January 2020, Y tells X that he will accept responsibility to pay for the purchases although at the time of purchase the agent had no authority to buy on credit. Y's subsequent statement on 20th January 2020 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2020.

Example 10: A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

Example 11: A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

Example 12: A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on

P.If, however the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of facts.

Example 13: A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

Example 14: A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Example 15: A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

Example 16: A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Example 17: An agent who has authority for sale of goods may repair it if necessary.

Example 18: A consigns perishable goods to B at Srinagar, with directions to send them immediately to C at Tamilnadu. B may sell the good if they begin to perish before reaching its destination

Example 19: A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.

Example 20: A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

Example 21: A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

Example22: A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

Example23: A consigns goods to B, a merchant, for sale. B in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Example 24: A, an agent is engaged for managing the business of B, in which it is a custom to invest money at hand for interest. If A omits to make such investment he must indemnify B for the losses i.e. for the interest B would have obtained for such investment

Example 25: B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C. C, before payment, becomes insolvent. B will have to indemnify A for the losses

Example 26: A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- e.g. by variation of rate of exchange-but not further.

Example 27: A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must compensate his principal for the loss sustained by him.

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Example 29: A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Example 30: A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

Example 31: A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or accept the sale at his option.

Example 32: A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Example 33: A employs B to recover `1,00,000 from C, and invest it in securities that give good returns. B recovers the amount and lays out `90,000 on good securities, but lays out ` 10,000 on securities which he ought to provide poor returns, whereby A loses ` 2,000. B is entitled to remuneration for recovering the ` 1,00,000 and for investing the ` 90,000. He is not entitled to any remuneration for investing the ` 10,000, and he must indemnify A for` 2000.

Example 34: A employs B to recover ` 1,00,000 from C. Because of B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Example 35: 'A' residing in Delhi appoints 'B' from Mumbai as anagent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non- performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.

Example 36: Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith.

Example 37: A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

Example 38: B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to indemnify B.

Example 39: A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must compensate B.

Example 40: A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

Example 41: A, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his· obligation to pay the sum in question to B.

Example 42: A, being owner of a ship and cargo, authorizes B to procure an insurance for ` 4,00,000 on the ship. B procures a policy for ` 4,00,000 on the ship, and another for

the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Example 43: A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of ` 6,00,000. A may repudiate the whole transaction.

Example 44: A authorizes B to draw bills to the extent Rs. 200 each. B draws bills in the name of A for Rs 1,000 each. A may repudiate the whole transaction

Example 45: A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

Example 46: A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Example 47: A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal

Example 48: A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

Example 49: A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor

Example 50: An agent who contracts for a minor, the minor being not liable, the agent becomes personally liable. This result, may not, however, follow where the other party already knows that the principal is a minor.

Example 51: SS bought for himself a ticket of IPL match at Wankahde Stadium through Ab because on personal grounds Stadium management would not have issued the ticket to SS. Stadium managementmay repudiate the contract and refuse SS to enter the stadium.

Example 52: A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

Example 53: A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Example 54: A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

Example 55: A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Example 56: A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

Example 57: A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

Example 58: A consigns 1000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor it is terminated by his insanity or death.

Example 59: A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it sells the goods for` 1,00,000. The sale is binding on A, and B is entitled to `5,000 as his commission.

Example 60: A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

Example 61: A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor

Chapter 2 : THE NEGOTIABLE INSTRUMENTS ACT,1881

Example 1: I acknowledge myself to be indebted to B in ` 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite)

Example 2: “Mr. B I.O.U ` 1,000.” – Invalid promissory note as there is no promise to pay. It is just an acknowledgement of debt.

Example 3: I promise to pay B ` 500 seven days after my marriage with C. (the promissory note is invalid as marriage with C may or may not happen.)

Example 4: I promise to pay B ` 500 on D’s death- as the death of D is certain, promise in unconditional. Thus, the promissory note is valid.

Example 5: I promise to pay B ` 500 on D’s death, provided D leaves me enough to pay that sum. Invalid promissory note as promise is dependent on D leaving behind money which is not certain.

Example 6: I promise to pay B ` 500 and to deliver to him my black horse on 1st January next. – It is not a valid promissory note, as the promisor needs to deliver its black horse which is not money

Example 7: “I promise to pay B ` 500 and all other sums which shall be due to him.”- Promissory note invalid as the amount payable is not certain

8-ignored

Example 9: A person who finds or steals a bearer instrument or takes an instrument under forged indorsement is not holder. The reason is that holder of a negotiable instrument must have right to receive or recover the money thereon from the parties thereto.

Example 10: An agent holding an instrument for his principal is not a holder. The reason being that, although agent can receive payment of the instrument, he has no right to sue on the instrument in his own name.

Example 11: A draws a cheque for `5,000 and hands it over to B by way of gift. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive `5000 from the bank on whom the cheque is drawn.

Example 12: On a Bill of Exchange for ` 1 lakh, X’s acceptance to the Bill is forged. ‘A’ takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether ‘A’ can be considered as a ‘Holder in due course’ and whether he (A) can receive the amount of the Bill from ‘X’.

Answer: According to section 9 of the Negotiable Instruments Act, 1881 ‘holder in due course’ means any person who for consideration becomes the possessor oa promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.As ‘A’ in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.But where a signature on the negotiable instrument is forged, it becomes a nullity. The

holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

Example 13: A signs his name on a blank but stamped instrument which he gives to B with an authority to fill up as a note for a sum of ` 3 000 only. But B fills it for ` 5,000. B then transfers it to C for a consideration of 5000 who takes it in good faith. Here in the case, C is entitled to recover the full amount of the instrument because he is a holder in due course whereas B, being a holder cannot recover the amount because he filled in the amount in excess of his authority

14 - ignored

Example 15: A bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%

Example 16: A person signed a blank acceptance on a bill of exchange and kept it in his drawer. The bill was stolen by X and he filled it up for ` 20,000 and negotiated it to an innocent person for value. It was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument.Further, as a condition of liability, the signer as a maker, drawer, indorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable. Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

Example 17: (a)A negotiable instrument dated 29th January, 2019, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2019. (b)A negotiable instrument, dated 30th August, 2019, is made payable three months after date. The instrument is at maturity on the 3rd December, 2019. (c)A promissory note or bill of exchange, dated 31st August, 2019, is made payable three months after date. The instrument is at maturity on the 3rd December, 2019.

Example 18: Bharat executed a promissory note in favour of Bhushan for ` 5 crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1st January, 2019 to Bharat. Bharat made the payments on 4th January, 2019. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day?

Answer: Claim of Interest: Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1stJanuary, Bharat was required to pay only on the 4th and not on 3rd January, as contended by Bhushan.

Example 19: (1)A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.(2)A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Example 20: X, who is the holder of a negotiable instrument, writes on the back thereof: "pay to Y or order" and signs the instrument. In such a case, X is deemed to have indorsed the instrument to Y. If X delivers the instrument to Y, X ceases to be the holder and Y becomes the holder.

Example 21:Blank (or general): No indorsee is specified in an indorsement in blank, it contains only the bare signature of the indorser. A bill so indorsed becomes payable to bearer

Example 22: Special (or in full): In such an indorsement, in addition to the signature of the indorser the person to whom or to whose order the instrument is payable is specified

Example 23: A is a holder of a bill for` 10000. A indorses it thus: "Pay B or or der ` 5000". This is partial indorsement and invalid for the purpose of negotiation.

Example 24: A bill may be indorsed: Pay A or order ` 5000 being the unpaid residue of the bill. It is a valid indorsement

Example 25: D signs the following indorsements on different negotiable instruments payable to bearer:(a)Pay the contents to G only(b)Pay G for my use(c)Pay G or order for the account of HThese indorsements exclude the right of further negotiation by G.

Example 26: A is the payee holder of a bill. A indorses it in blank and delivers it to B. B indorses it in full to c or order. C without indorsement transfers the bill to D. D as the bearer is entitled to receive payment or to sue drawer, acceptor, or A who indorsed the bill in blank, but he cannot sue B or C. C can sue B as he received the bill form by indorsement in full. If, however, C instead of passing the bill to D without indorsement passes it by a regular indorsement, D can claim against all prior partiesThus, if an indorsement in blank is followed by an indorsement in full, the instrument still remains payable to bearer and negotiable by delivery against all parties prior to the indorser in full, though the indorser in full is only liable to a holder who made title directly through his indorsement, and person deriving title through such holder.

Example 27: A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words “or order” or any equivalent words. B may negotiate the instrument.

Example 28: B signs the following indorsements on different negotiable instruments payable to bearer,— (a)“pay the contents to C only”.(b)“pay C for my use”.(c)“pay C on order for the account to B” d)“the within must be credited to C”.These indorsements exclude the right of further negotiation by C.(a) “pay C”.(b) “pay C value in account with the Oriental Bank”.(c) “pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to indorser and others”

Example 29: (1)The indorser of a negotiable instrument signs his name, adding the words “without recourse”. Upon this indorsement he incurs no liability. (2)A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement, “without recourse”, he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C

Example 30: The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A’s title is subject to the same objection as the drawer’s title.

Example 31: A is the holder of a bill of exchange made payable to the order of B. which contains the following indorsements in blank: 1st indorsement - ‘B’, 2ndindorsement - C, 3rd indorsement - D, 4th indorsement – E. A puts this bill in suit against C and strikes out, without E’s consent, the indorsements by C and D. A is not entitled to recover anything from E.

Example 32: A draws a cheque in favour of M, a minor. M indorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Here in this case, M being a minor may draw, indorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.

Example 33: A, the holder of a bill to B, before delivering the bill died, the legal representative of A subsequently delivered the bill to B. The Indorsement is invalid and B cannot sue on the bill.

Example 34: A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Example 35: A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank- First indorsement, “B”.Second indorsement, “Peter Williams”.Third indorsement, “Wright & Co.”.Fourth indorsement “John Rozario”.This bill A puts in suit against John Rozario and strikes out, without John Rozario’s consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Example 36: X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus, becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881

Example37: A draws a bill on B for ` 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to ` 400, and as an accommodation to the plaintiff as to the residue. A can only recover ` 400.

Example 38: A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and indorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.

Answer: Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque. However, the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

Example 39: “A draws a cheque for ` 1000 and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque”.

Example 40: “A draws a cheque at Ambala on a bank in Kolkata. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque”.

Example 41: A promissory note was made without mentioning any time for payment. The holder added the words “on demand” on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words “on demand” does not alter the business effect of the instrument.

Example 42: State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?(i) The holder of the bill inserts the word “or order” in the bill,(ii) The holder of the bearer cheque converts it into account payee cheque,

Answer: The following materials alterations have been authorised by the Act and do not require any authentication:(a)filling blanks of inchoate instruments [Section 20](b)Conversion of a blank indorsement into an indorsement in full [Section 49]

Example 43: Is notice of dishonour necessary in the following cases:(1)X having a balance of ` 1,000 with his bankers and having no authority to over draw, drew a cheque for ` 5,000/-. The cheque was dishonored when duly presented for repayment.(2)X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonored on the presentment for payment.

Answer: Notice of dishonour is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].

Example 44: X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to stop the payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post- dated cheque irrespective of insufficiency of funds in the account. A post-dated cheque is deemed to have been drawn on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer a presumption under section 139 must follow.

Example 45: A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently, the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence under section 138?

Answer: 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/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138

Example 46: Mr. A holds an account in Navrangpura Branch, Ahmedabad of “XYZ" Bank, issues a cheque payable in favor of B. B, who holds an account with the M.S University Road Branch, Vadodara of the “PQR" bank, deposits the said cheque at Surat Branch

of ‘PQR bank’ and the cheque is dishonored. The complaint will have to be filed before the court having jurisdiction where the M.S University road branch is situated.

Chapter 3 : THE GENERAL CLAUSES ACT,1897

Example 1: Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him. (Rayarappan V. Madhavi Amma, A.I.R. 1950 F.C. 140)

Example 2: A claim of the right to catch fish came under the consideration of the court inAnanda Behera v. State of Orissa. The court tended to decide whether the right to catch or carry fish is a movable or immovable property.

Example 3:Section 3of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897.

Example 4: Preamble of the Negotiable Instruments Act, 1881 states - “An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheque.”

Example 7: Word ‘Security’ used in the Companies Act, is not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalently applicable on the Companies Act, 2013. Similarly, the word ‘Digital signature’ used in the Companies Act, shall be construed as per the section 2(1) (p) of the Information Technology Act, 2000

Example 8: The word ‘Affidavit’ used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word ‘Affidavit’ as defined in the General Clauses Act, 1897.

Example 9: Definition of ‘Company’ as given in section 2(20) of the Companies Act, 2013. It states, “Company” means a company incorporated under this Act or under any previous company law.

Example 11: Word ‘debenture’ defined in section 2(30) of the Companies Act, 2013 states that “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not”. This is a definition of inclusive nature.

Example 13: Share defined under section 2(84) of the Companies Act, 2013, states that “Share” means a share in the share capital of a company and includes stock;

Example 15: Section 21 of the Companies Act, 2013, provides that documents/proceeding requiring authentication or the contracts made by or on behalf of the company, may

be signed by any Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf

Example 16:. In Shantabai v. State of Bombay, the Supreme Court pointed out that trees must be regarded as immovable propertybecause they are attached to or rooted in the earth.

Example 17: Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.

Example 18: The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in Official Gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

Example 19: SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14thAugust, 2015 with effect from 1 January, 2016. Here, this regulation shall come into force on 1st January, 2016 rather than the date of its notification in the gazette.

Example 20: In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

Example 21: A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2016. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

xample 22: Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

Example 23: When a company pays dividends to its shareholders, each investor is paid according to their holdings. If a company has 100 shares outstanding, for example, and issues a dividend of Rs. 2 per share, the total amount of dividends paid will be Rs. 200. No matter how many shareholders there are, the total dividend payments cannot exceed this limit. In this case, Rs.200 is the whole, and the pro rata calculation must be used to determine the appropriate portion of that whole due to each shareholder.

Example 24: The term ‘collector’ used in Rule 4 of the Land Acquisition (Companies) Rule, 1963, will have the same meaning as in Section 3(c) of the Land Acquisition Act, 1894.

In Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269, it was held that 'Notification' in common English acceptation mean and imply a formal announcement of a legally relevant fact and "notification publish in Official Gazette" means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.

Chapter 4 : INTERPRETATION OF STATUTES

Example 2 : In a question before the court whether the sale of betel leaves was subject to sales tax. The Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax.(Ramavtar V. Assistant Sales Tax Officer, AIR 1961 SC 1325)

Example 3 : Application of this mischief rule is also well-found in the construction of section 2(d) of the Prize Competition Act, 1955. This section defines 'prize competition' as "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The issue was whether the Act applies to competitions which involve substantial skill and are not in the nature of gambling. Supreme Court, after referring to the previous state of law, to the mischief that continued under that law and to the resolutions of various states under Article 252(1) authorizing Parliament to pass the Act has stated as follows: "having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in whichsuccess does not depend on any substantial degree of skill." (RMD Chamarbaugwalla V. Union of India, AIR 1957 SC 628).

Example 4: Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court. So, the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.[Aswini kumar Ghose v. Arabinda Bose, AIR 1952 SC]

Example 5: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and

codify the law relating to marriage among Hindus" [Gullipoli Sowria Raj V. Bandaru Pavani, (2009)1 SCC714]

Example 6: The usage of word 'any' in the definition connotes extension for 'any' is a word of every wide meaning and prima facie the use of it excludes limitation.It has been a universally accepted principle that where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context

Example 7: Inclusive definition of lease given under section 2(16)(c) of the Stamp Act, 1899 has been widely construed to cover transaction for the purpose of Stamp Act which may not amount to a lease under section 105 of the Transfer of property Act, 1882. [State of Uttarakhand v. Harpal Singh Rawat, (2011) 4 SCC 575]Section 2(m) of the Consumer Protection Act, 1986 contains an inclusive definition of 'person'. It has been held to include a 'company' although it is not specifically named therein[Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd., (2009)3 SCC 240]

Example 8: If A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B

Example 9 : Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. [Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana, AIR 1997 SC 2698]. But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project. [S.M. Nilajkarv Telecom District Manager Karnataka, (2003)4 SCC].

Example 10: In holding that section 73 of the Indian Contract Act, 1872 does not permit the award of interest as damages for mere detention of debt, the privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.

Example 11: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.