

# Law Examination Answers

## Section A

**(a) State with reason whether the following statements are true or false:**

- (i) Anything done in ignorance of offer does not amount to acceptance. (4 marks)**

**Answer:** True. Acceptance must be made with knowledge of the offer. According to contract law, acceptance requires that the offeree must be aware of the offer at the time of acceptance. If a person performs an act without knowing about the offer, it cannot be considered as valid acceptance because there is no meeting of minds (*consensus ad idem*). This principle was established in cases like *Fitch v Snedaker* (1868) where the court held that reward cannot be claimed by someone who performed the required act without knowledge of the offer.

- (ii) Presence of consideration is required, adequacy of consideration is not required. (4 marks)**

**Answer:** True. The law only requires that consideration must exist (something of value in the eyes of law), not that it must be adequate or of equal value to the promise. This is encapsulated in the maxim "consideration must be sufficient but need not be adequate." For example, in *Chappell & Co Ltd v Nestle Co Ltd* (1960), the court held that even a chocolate wrapper could constitute valid consideration, despite its minimal value. The courts generally don't inquire into whether the bargain was fair or equal in value.

- (iii) Transactions collateral to illegal agreements are not always illegal. (4 marks)**

**Answer:** True. While the general rule is that collateral transactions to illegal agreements are void, there are exceptions. If the collateral transaction is separate and distinct from the illegal agreement and the plaintiff is not in *pari delicto* (equally at fault), it may be enforceable. For instance, in *Herman v Jeuchner* (1885), a loan given for an illegal purpose was held recoverable when the lender was unaware of the illegality. However, if the collateral transaction is directly connected to the illegal agreement, it will be void.

**(b) A minor takes a loan of rs50,000 at 10% interest. After attaining majority, he makes a fresh promise to pay the loan taken during minority. Is this promise enforceable by the lender? (6 marks)**

**Answer:** No, the fresh promise made after attaining majority is not enforceable. According to the Indian Contract Act, 1872 (Section 11), a contract with a minor is void ab initio (from the beginning). The principle of "no estoppel against a minor" prevents the minor from being bound by any representation or promise made during minority. Even a fresh promise after attaining majority (called ratification) cannot validate a void contract. This was established in *Mohori Bibee v Dharmodas Ghose* (1903), where the Privy Council held that a minor cannot ratify a contract made during minority. The lender cannot enforce the promise as there was never any valid contract to begin with, and the fresh promise doesn't create any new obligation because it's based on a void transaction.

**(OR)**

**(a) Critically comment on the following:**

- (i) **Stranger to consideration can sue provided he is party to contract. (4 marks)**

**Answer:** This statement reflects the doctrine of privity of contract, which states that only parties to a contract can enforce it, even if the contract was made for their benefit. The rule was established in *Tweddle v Atkinson* (1861) and affirmed in *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* (1915). However, there are exceptions where a stranger to consideration (someone who hasn't provided consideration) can sue if they are named as a party to the contract. For example, in trust situations or family arrangements, beneficiaries can enforce contracts made for their benefit. The Indian Contract Act (Section 2(d)) also recognizes that consideration may move from any person, not necessarily the promisee. While the general rule is sound in maintaining contractual boundaries, it can lead to injustice in some cases, which is why exceptions have developed.

- (ii) **Unilateral mistake does not affect a contract. (4 marks)**

**Answer:** Generally true, but with important exceptions. The general rule is that unilateral mistake (where only one party is mistaken) does not affect the validity of a contract, as established in *Smith v Hughes* (1871). However, there are exceptions where unilateral mistake can make a contract voidable: 1) If the mistake is about the nature of the contract itself (non est factum), 2) If one party is mistaken about the terms and the other party knows or ought to know of this mistake, or 3) In cases of fraudulent misrepresentation. The statement is too broad without acknowledging these exceptions where unilateral mistake can indeed affect the contract.

- (iii) **Mere mental assent does not amount to acceptance. (4 marks)**

**Answer:** True. Acceptance must be communicated to the offeror to be legally effective, as established in *Felthouse v Bindley* (1862). Mere mental assent or uncommunicated intention to accept doesn't create a binding contract. This principle ensures certainty in contractual relations - parties must objectively manifest their assent through words or conduct. There are exceptions in cases of unilateral contracts where performance constitutes acceptance, but even then, the performance must be observable. The requirement of communication protects parties from being bound by secret intentions they couldn't possibly know about.

**(b) Ramesh sold his artificial jewellery business in London to Jhon. Ramesh promised not to do any business relating to real or artificial jewellery anywhere in London for two years. But after a month he started real jewellery business in London. Can Jhon prevent him from doing this? (6 marks)**

**Answer:** Whether Jhon can prevent Ramesh depends on whether the restraint of trade clause is reasonable and enforceable. Under common law, restraint of trade clauses are void as against public policy unless they satisfy three conditions: 1) They protect a legitimate business interest, 2) They are reasonable in terms of geographical area, and 3) They are reasonable in duration.

In this case: 1) The sale of business context generally justifies some restraint to protect the goodwill being sold. 2) The restriction covers all of London, which may or may not be reasonable depending on the business's actual reach. 3) Two years is typically considered reasonable for a business sale context. 4) The restriction covers both artificial and real jewellery, which could be seen as going beyond what's necessary to protect the sold business.

Jhon would likely succeed in preventing Ramesh from engaging in artificial jewellery business (the exact business sold), but may have difficulty preventing the real jewellery business unless he can show it directly competes with or devalues the sold business. The court would assess whether the restraint goes no further than necessary to protect the legitimate business interest.

## **Section B**

**2(a) Discuss when a sub agent can be appointed and when it cannot be appointed. What impact it will have on liability of principal towards third parties. (6 marks)**

**Answer:**

**Appointment of Sub-agent:** A sub-agent can be validly appointed in the following circumstances: 1) When expressly authorized by the principal (Section 190 of Indian Contract Act) 2) When impliedly authorized by the nature of the agency 3) When the act is purely ministerial (routine/mechanical) in nature 4) In cases of necessity or emergency

A sub-agent cannot be appointed: 1) When the agency is personal in nature (requiring agent's personal skill/confidence) 2) When expressly prohibited by the principal 3) For acts requiring the agent's personal judgment/discretion

**Impact on Principal's Liability:** 1) When properly appointed (with express/implied authority): - The principal is bound by and responsible for the acts of the sub-agent to third parties (Section 192) - The sub-agent is responsible to the agent, not directly to the principal

2) When improperly appointed (without authority): - The principal is not bound by the sub-agent's acts towards third parties - The agent becomes responsible to both principal and third parties for the sub-agent's acts - The sub-agent is not responsible to the principal

The distinction is crucial in determining liability - proper appointment creates privity between principal and sub-agent's acts, while improper appointment breaks this privity.

### (b) Differentiate between indemnity and guarantee. (6 marks)

**Answer:**

Basis	Indemnity	Guarantee
Definition	Promise to save from loss (S.124)	Promise to perform if default (S.126)
Parties	Two parties (indemnifier & indemnity holder)	Three parties (creditor, principal debtor, surety)
Liability	Primary & independent	Secondary & dependent on principal debtor
Number of contracts	Single contract	Three contracts (creditor-debtor, creditor-surety, debtor-surety)
Right to sue	Indemnifier can't sue third parties unless assigned rights	Surety can sue principal debtor after payment
Nature	Protects against potential loss	Secures debt/performance
Example	Insurance contract	Bank guarantee

Key distinction: Indemnity is an original promise to compensate loss, while guarantee is a collateral promise to answer for another's default.

### (c) Anish finds jewellery lying on the corridors of his office. What is Anish's position? Explain his rights and duties. (6 marks)

**Answer:**

Anish's position is that of a finder of goods under Section 71 of the Indian Contract Act (bailee obligations apply).

**Rights of Anish:** 1) Right to retain the jewellery until true owner is found (lien) 2) Right to reimbursement for expenses incurred in preserving the jewellery 3) Right to reward if offered by the owner 4) Right to sue for specific reward if publicly announced 5) After reasonable efforts to find owner, right to sell if goods are perishable (with court permission otherwise)

**Duties of Anish:** 1) Duty to take reasonable care of the jewellery as a prudent person would of his own goods 2) Duty to make reasonable efforts to locate the true owner 3) Duty not to use the jewellery for personal benefit 4) Duty to return the jewellery to true owner when found 5) Duty not to mix the jewellery with his own goods

Anish must act as a trustee for the true owner. If he appropriates the jewellery dishonestly, he could face criminal liability for theft under IPC. The office management may have claims if the jewellery was found in a restricted area.

**(OR)**

**(a) "Liability of Surety Is co-extensive with that of the Principal Debtor" Comment. (6 marks)**

**Answer:** This principle from Section 128 of the Indian Contract Act means that the surety's liability is identical in nature and extent to that of the principal debtor, unless otherwise specified in the contract.

Key implications: 1) The surety is liable for all amounts the principal debtor is liable for 2) Any defense available to the principal debtor is generally available to the surety 3) The creditor can sue the surety without first exhausting remedies against the principal debtor 4) The surety's liability arises simultaneously with the principal debtor's liability

Exceptions: 1) If the contract specifies limited liability for the surety 2) In cases of fraud or misrepresentation by the creditor 3) If the principal debtor's liability is void ab initio (not merely voidable)

Example: If a debtor defaults on a rs1 lakh loan, the surety is liable for the full rs1 lakh plus any interest/charges the debtor owes. The creditor can demand full payment from the surety without first pursuing the debtor.

Rationale: This protects creditors while ensuring sureties understand they're undertaking primary liability, not just backup liability.

**(b) Ratification tantamount to prior authority. Discuss. (6 marks)**

**Answer:** The principle means that when a principal ratifies an unauthorized act done by an agent, the legal effect is the same as if the agent had prior authority to perform that act.

Key aspects: 1) Ratification relates back to the date of the original act (doctrine of relation back) 2) The ratified act becomes valid from inception, not just from date of ratification 3) Third parties' rights are affected as if authority existed originally

Requirements for valid ratification: 1) The agent must have purported to act for the principal 2) The principal must have been in existence and competent at time of act 3) The principal must have full knowledge of material facts 4) Ratification must be of the whole transaction, not part 5) Must occur within reasonable time 6) The act must be legal and capable of authorization

Example: If A, without authority, contracts with T on behalf of P, and P later ratifies, the contract is binding as if A had authority when contracting.

Limitations: 1) Cannot prejudice third party rights acquired before ratification 2) Cannot ratify forgery or illegal acts 3) Cannot ratify if it would require a formal authority that wasn't given

### (c) Differentiate between Bailment and Pledge. (6 marks)

**Answer:**

Basis	Bailment	Pledge (Special bailment)
Definition	Delivery of goods for specific purpose (S.148)	Bailment as security for debt (S.172)
Purpose	Various (repair, safekeeping etc)	Specifically as security for loan
Right to sell	Bailee has no sale rights	Pawnee can sell after default
Consideration	May or may not involve payment	Always involves debt/obligation
Parties	Bailor & Bailee	Pawnor & Pawnee
Examples	Giving watch for repair	Pawning gold for loan
Use of goods	Only as per bailment terms	No use allowed by pawnee

Key difference: All pledges are bailments, but not all bailments are pledges. Pledge is a specific type of bailment for security purposes with additional rights.

## Section C

### 3(a) "In a contract of sale there is no implied condition as to quality and fitness of goods for buyer's purpose". Comment. (6 marks)

**Answer:** This statement is partially incorrect. While the general rule is caveat emptor (let the buyer beware), the Sale of Goods Act provides important exceptions where conditions of quality/fitness are implied:

1) Section 16(1): Where buyer makes known particular purpose and relies on seller's skill/judgment (goods must be reasonably fit for that purpose) - Example: Buyer asks for waterproof watch, seller supplies non-waterproof

2) Section 16(2): Goods sold by description must be of merchantable quality (now satisfactory quality under modern laws) - Example: Packaged food must be edible

3) Section 16(3): Where goods are bought by sample, bulk must match sample quality

Exceptions where no implied conditions exist: - When buyer examines goods and should notice defects - When specific defects are pointed out - In sale of specified items under trade name

Thus, while the basic premise is correct that there's no universal implied condition, important statutory exceptions exist that effectively create implied conditions in many common commercial transactions.

**(b) What remedies are available to buyer if the seller delivers the wrong quantity or wrong quality of goods? (6 marks)**

**Answer:**

**For Wrong Quantity:** 1) Reject entire delivery if variance is substantial (Section 37) 2) Accept contracted quantity and reject excess if delivered more 3) Accept whole if buyer chooses (must pay for excess at contract rate) 4) Claim damages for any loss caused by wrong quantity

**For Wrong Quality:** 1) Reject goods entirely if breach of condition (Section 13-15) 2) Claim damages if breach of warranty (Section 59) 3) Ask for price reduction (Section 59) 4) Sue for specific performance if goods are unique (Section 58) 5) Sue for negligence if quality defect causes harm 6) In case of fraud, additional remedies under consumer laws

Additional remedies: - Withhold payment if goods not yet accepted - Sue for anticipatory breach if seller indicates wrong delivery - In installment contracts, reject installment if not as per contract

Buyer must act promptly upon discovery of defect (reasonable time under Section 42). Rights may be lost if buyer acts inconsistently with seller's ownership (Section 43).

**(c) A sells a TV to B for rs50,000. Ownership passed to the buyer but TV is yet to be delivered to B. By mistake A sells the same TV to C for rs50,000. Can B now take back the TV from C? (6 marks)**

**Answer:**

The answer depends on whether C was a bona fide purchaser for value without notice:

1) If C knew or should have known about prior sale to B: - B can recover TV from C as C isn't protected - B's ownership prevails as first in time

2) If C was bona fide purchaser without notice of B's rights: - Under Section 30 of Sale of Goods Act, buyer in possession can pass good title - But here A (seller) was in possession, not B - General rule is nemo dat quod non habet (can't give what you don't have) - Unless estoppel applies against B (if B's conduct made A appear as owner)

Likely outcome: - B can recover TV from C because: a) Ownership had passed to B b) A had no right to sell to C c) No statutory exception protects C (Section 27-30 don't apply) d) Unless shop was selling similar TVs creating apparent authority

C's remedy is against A for breach of warranty of title, not against B. B's property rights prevail over C's contractual rights in this scenario.

**(OR)**

**(a) "Right of stoppage in transit is an extension of right of lien for an unpaid seller". Comment. (6 marks)**

**Answer:** This statement correctly identifies the relationship between the unpaid seller's lien and right of stoppage in transit under the Sale of Goods Act:

**Unpaid Seller's Lien (Section 47-48):** - Right to retain possession until payment - Applies when goods are in seller's possession - Ends when possession is lost (by delivery or otherwise)

**Right of Stoppage in Transit (Section 50-52):** - Arises when buyer becomes insolvent - Allows seller to resume possession during transit - Effectively extends lien to period after goods leave seller's possession but before buyer takes possession

Key similarities showing extension: 1) Both protect unpaid seller's interest 2) Both allow seller to retain/resume possession 3) Subject to similar conditions (unpaid, no credit period remaining)

Key differences: 1) Lien requires physical possession; stoppage applies during constructive possession (carrier's custody) 2) Stoppage has narrower grounds (only buyer insolvency) 3) Stoppage has specific rules about when transit begins/ends

The right of stoppage thus serves as a "floating lien" that bridges the gap between seller's possession and buyer's possession, preventing the buyer from obtaining goods without payment when insolvent.

**(b) Discuss the rules for transfer of ownership in ascertained goods. (6 marks)**

**Answer:** Rules for transfer of ownership in ascertained (specific) goods under Sale of Goods Act:

1) **Primary Rule (Section 20):** Ownership passes when parties intend it to pass - Determined by contract terms, conduct of parties, circumstances

2) **Presumptive Rules (when intention unclear):** a) Unconditional contract for specific goods in deliverable state: ownership passes at contract time (Section 21) - Deliverable state = ready for immediate delivery b) If seller has to do something to put in deliverable state: passes when done and buyer notified (Section 22) c) If goods have to be weighed/measured/tested to determine price: passes when done and buyer notified (Section 23) d) Goods delivered "on approval": passes when buyer signifies approval or retains without rejection beyond reasonable time (Section 24)

3) **Reservation of Right of Disposal (Section 25):** - Seller may reserve ownership until certain conditions met (e.g., payment) - Despite delivery to buyer/carrier, ownership doesn't pass until conditions fulfilled

4) **Effect of Destruction:** - If goods perish before ownership passes, contract becomes void (Section 7) - If after passing, buyer bears loss

Key principles: - Intention of parties is paramount - Physical delivery isn't necessary for ownership transfer - Risk generally follows ownership unless otherwise agreed



**(c) Amar orders 500 tins of fruit Juice packed in cases containing 20 tins per case. The juice was delivered to Amar but it was packed in cases containing 10 tins per case, though Juice was of the same quality. Can A reject the goods? (6 marks)**

**Answer:** Yes, Amar can likely reject the goods based on breach of condition regarding manner of packing.

Legal analysis: 1) **Condition vs Warranty:** Packing specifications in commercial contracts are often conditions (go to root of contract), especially if: - Expressly made condition in contract - Different packing affects utility/value (e.g., storage, handling, resale) - Industry norms treat such specifications as essential

2) **Sale by Description (Section 15):** Goods must correspond with description - "20 tins per case" was part of contractual description - Different packing makes goods non-conforming

3) **Commercial Practicalities:** - 10-tin cases may require different storage/transport arrangements - May affect Amar's ability to resell as per original specifications - Even if juice quality same, packaging is material term

4) **Buyer's Rights (Section 37):** - Can reject entire delivery as non-conforming - Or accept some and reject rest (but impractical here) - Must act within reasonable time of discovery

Exceptions where rejection may not be allowed: - If variance is trivial/minor (not applicable here - 100% difference in packaging) - If Amar's conduct shows acceptance (e.g., uses goods after discovery) - If contract expressly allows seller to vary packaging

Conclusion: Unless contract provides otherwise, the substantial variation in packaging constitutes breach of condition allowing rejection, even though juice quality is unaffected.

## Section D

**4(a) Limited Liability Partnership combines the advantages of both Traditional Partnership and Company. Discuss. (6 marks)**

**Answer:** The LLP structure (under Limited Liability Partnership Act, 2008) indeed merges benefits from both models:

**Advantages from Traditional Partnership:** 1) **Flexible Internal Structure:** Partners can govern relations via LLP agreement 2) **Tax Benefits:** Taxed as partnership (no dividend distribution tax) 3) **Less Regulatory Compliance:** Compared to companies 4) **Direct Participation:** Partners manage business directly

**Advantages from Company Structure:** 1) **Limited Liability:** Partners' liability limited to contribution (Section 26) 2) **Separate Legal Entity:** Can own property, sue/be sued (Section 14) 3) **Perpetual Succession:** Unaffected by partner changes 4) **Credibility:** Formal registration and compliance enhances trust

**Unique Advantages:** 1) **No Minimum Capital:** Unlike companies 2) **Fewer Board Meetings:** No mandatory requirements 3) **Partner Flexibility:** Can have any number, no director requirements 4) **Asset Protection:** Personal assets shielded from business liabilities

Example: Professional firms (CA, lawyers) benefit from limited liability while retaining partnership flexibility. Startups get credibility without excessive compliance.

Thus, LLP successfully hybridizes organizational forms, making it popular for small/medium businesses and professional services.

**(b) Discuss the procedure for changing the registered office of LLP. (6 marks)**

**Answer:** Procedure for changing registered office under LLP Act and Rules:

- 1) **Board Resolution:** Partners must approve change (majority or as per LLP agreement)
  - 2) **Form 15 Filing:** File with ROC within 30 days of change: - Details of new address - Copy of resolution/consent - Fee payment
  - 3) **Verification:** ROC verifies documents and updates records
  - 4) **Intimation to Stakeholders:** Notify: - Banks (for account updates) - Clients/vendors (for correspondence) - Tax authorities (PAN, GST registrations) - Other regulatory bodies (if applicable)
  - 5) **Display Requirements:** New address must be displayed at premises and on all official documents
  - 6) **Special Cases:** - If moving to another state: Requires consent of all partners and creditors - May need fresh registrations under state laws (shops & establishments, etc.)
  - 7) **Website/Letterhead Updates:** Must reflect new address within reasonable time
- Penalty for non-compliance: Fine up to rs25,000 plus daily fines for continuing default. Proper procedure ensures continuity of legal existence and service of notices.

**(c) How is an LLP incorporated? Discuss. (6 marks)**

**Answer:** LLP incorporation process under LLP Act, 2008:

- 1) **Digital Signature Certificates (DSC):** - All designated partners must obtain DSCs
  - 2) **Director Identification Number (DIN):** - Every designated partner needs DIN (Form DIR-3)
  - 3) **Name Approval (Form 1):** - Submit 1-2 preferred names to ROC - Name must include "LLP" suffix - Shouldn't resemble existing companies/LLPs
  - 4) **Incorporation Document (Form 2):** - Details of partners, capital, business objectives - LLP agreement (can file within 30 days post-incorporation) - Registered office proof - Subscriber sheet with partner signatures
  - 5) **Payment of Fees:** Based on contribution amount
  - 6) **ROC Verification:** - Checks documents for compliance - Issues Certificate of Incorporation (LLP Identity Number)
  - 7) **Post-Incorporation Compliance:** - File LLP agreement (Form 3) within 30 days - PAN/TAN application - Bank account opening - GST registration if applicable
- Key requirements: - Minimum 2 partners (individuals/companies) - At least 2 designated partners (1 must be Indian resident) - No minimum capital requirement
- Entire process is online through MCA portal, typically takes 15-20 days if documents are in order.

(OR)

(a) Discuss the steps to be followed in formation of LLP online. (6 marks)

**Answer:** Online LLP formation steps via MCA portal:

1) **DSC Application:** - Partners apply for Class 3 Digital Signature Certificates - From certified agencies (e.g., TCS, SIFY)

2) **DIN Allocation:** - File Form DIR-3 for each designated partner - Attach identity/address proofs - Pay prescribed fees

3) **Name Reservation (RUN-LLP):** - Submit proposed names in order of preference - Check name availability via MCA search - Maximum two names per application - Fee: rs200

4) **Form FiLLiP (Form 2):** - Integrated form for incorporation + DIN (if needed) - Details required: \* Partner/designated partner information \* Capital contribution \* Registered office address \* Business objectives - Attach: \* Address proof (utility bill/rent agreement) \* Subscriber sheet with signatures \* Consent of partners - Pay stamp duty based on state and capital

5) **Payment & Submission:** - Pay fees based on contribution amount - Submit form with digital signatures

6) **ROC Processing:** - MCA examines documents - May request clarifications - Approves and issues Certificate of Incorporation

7) **Post-Incorporation:** - File LLP Agreement (Form 3) within 30 days - PAN/TAN application - Open bank account - GST registration if applicable

Entire process is paperless with real-time tracking on MCA portal. Average processing time is 15 days if documents are complete.

(b) Discuss the qualifications/disqualifications for being Designated Partner of LLP. What role does Designated partner play in LLP? (6 marks)

**Answer:**

**Qualifications for Designated Partner:** 1) Individual must have DIN 2) At least 18 years old 3) Sound mind (not disqualified by court) 4) Not adjudicated insolvent 5) For foreign nationals: At least one designated partner must be Indian resident

**Disqualifications:** 1) Convicted of fraud/moral turpitude offence (5 years post-conviction) 2) Undischarged insolvent 3) Court/Tribunal has disqualified 4) Non-compliance with LLP Act provisions (ROC can disqualify) 5) If company is partner: company must not be in dissolution

**Roles & Responsibilities:** 1) **Compliance Officer:** Ensure LLP meets all legal/regulatory requirements 2) **Signatory Authority:** Execute documents/bind LLP in contracts 3)

**Filing Responsibilities:** Sign and file all statutory returns/forms 4) **Representation:** Represent LLP in legal/administrative matters 5) **Management:** Participate in strategic decision-making 6) **Fiduciary Duty:** Act in best interest of LLP

Additional obligations: - Appoint compliance professional if annual turnover exceeds rs40 lakhs/contribution exceeds rs25 lakhs - Liable for penalties for non-compliance - Must disclose interest in other businesses

Designated partners are essentially the key managerial persons who ensure LLP operates within legal framework while conducting business.

**(c) Write a note on choosing and changing name of LLP. (6 marks)**

**Answer:**

**Choosing LLP Name:** 1) **Legal Requirements:** - Must end with "LLP" or "Limited Liability Partnership" - Shouldn't be identical/existing name - Must not suggest government patronage - No trademarks infringement

2) **Guidelines:** - Preferably reflect business nature - Easy to remember/spell - Culturally appropriate - Check trademark registry for conflicts - Verify domain name availability

3) **Restricted Words:** - Words like "National", "Bank", "Insurance" require approval - Professional terms (CA, Advocate) need regulatory approvals

**Changing LLP Name:** 1) **Process:** - Partners' resolution approving change - File Form 5 (name change application) with ROC - Pay prescribed fees (rs200-rs500 based on capital) - ROC issues new Certificate of Incorporation

2) **Post-Approval Steps:** - Update all legal documents/contracts - Notify banks/financial institutions - Update stationery/signages - File Form 3 (amended LLP agreement) - Update GST/PAN/TAN registrations - Inform clients/vendors

3) **Timeframe:** - Typically 10-15 days for ROC approval - All updates should be completed within 1-2 months

Key considerations: - Name change doesn't affect legal identity/rights - Existing contracts remain valid under new name - Must use new name consistently after approval - Old name may need to be published as "formerly known as"

Proper naming ensures brand identity while complying with legal requirements. Changes should be carefully planned to minimize business disruption.

**(a) “Difficulty of performance does not discharge a contract but impossibility does”. Comment giving examples. (9 marks)**

- The statement highlights the distinction between “**difficulty of performance**” and “**impossibility of performance**” in contract law.
- **Difficulty of Performance:**
  - Mere difficulty or inconvenience in performing a contract does not discharge the parties from their obligations.
  - The contract remains enforceable, and the party must find a way to fulfill their duties.
  - **Example:** A construction company agrees to build a house within six months but faces delays due to labor shortages. The company cannot claim discharge from the contract; it must still complete the project, possibly with penalties for delay.
- **Impossibility of Performance:**
  - A contract is discharged if performance becomes objectively impossible due to unforeseen events beyond the parties’ control (doctrine of frustration).
  - **Types of Impossibility:**
    - \* **Physical Impossibility:** The subject matter is destroyed (e.g., a concert hall burns down before an event).
    - \* **Legal Impossibility:** Performance becomes illegal (e.g., a government bans the export of goods contracted for sale).
    - \* **Commercial Impossibility:** Rarely accepted; mere unprofitability does not qualify (e.g., a sudden price hike in raw materials does not discharge a manufacturing contract).
  - **Example:** In *Taylor v Caldwell* (1863), a music hall rented for concerts was destroyed by fire. The court held the contract was frustrated, discharging both parties.
- **Key Difference:** Difficulty requires the party to bear the burden, while impossibility (if genuine) discharges the contract under **Section 56 of the Indian Contract Act, 1872**.

**(c) Discuss the procedure for converting a traditional Partnership to LLP. What will be the consequences of such conversion? (9 marks)**

- **Procedure for Conversion:**
  1. Obtain DIN & DSC:

- All partners must obtain Director Identification Numbers (DIN) and Digital Signature Certificates (DSC).
- 2. Name Reservation:**
  - File Form RUN-LLP with the Registrar of Companies (ROC) to reserve a name ending with “LLP”.
- 3. File Form 17 (Application for Conversion):**
  - Submit with attachments:
    - \* Statement of partners’ consent.
    - \* Incorporation document (Form 2).
    - \* Partnership deed copy.
    - \* Financial statements.
    - \* Proof of registered office.
- 4. File Form 3 (LLP Agreement):**
  - Submit within 30 days of conversion, detailing the new LLP structure.
- 5. ROC Approval:**
  - ROC issues a Certificate of Incorporation, dissolving the old partnership.
- **Consequences of Conversion:**
  - **Legal Status:** The LLP becomes a separate legal entity; partners’ liability is limited.
  - **Taxation:** Continuity of tax obligations; no capital gains tax on conversion.
  - **Contracts & Licenses:** Existing contracts remain valid but must be updated to reflect the LLP’s name.
  - **Compliance:** Higher regulatory requirements (e.g., annual filings) compared to a partnership.
  - **Perpetual Succession:** The LLP survives changes in partners.

(OR)

**(a) Discuss the rules relating to claiming damages for breach of contract giving suitable examples. (9 marks)**

- Damages are monetary compensation for loss due to breach, governed by **Sections 73-75 of the Indian Contract Act, 1872.**
- **Rules for Claiming Damages:**
  - 1. Compensatory Nature:**
    - Aim to restore the aggrieved party to the position they would have been in had the contract been performed.
    - **Example:** If a seller fails to deliver goods, the buyer can claim the cost of purchasing equivalent goods elsewhere.

## 2. Remoteness of Damage (Hadley v Baxendale Rule):

- Damages must arise naturally from the breach or be within the parties' contemplation at contract formation.
- **Example:** A courier delays delivering a machine part, causing factory downtime. Only foreseeable losses (e.g., lost wages) are recoverable.

## 3. Mitigation:

- The injured party must take reasonable steps to minimize loss.
- **Example:** A tenant must attempt to re-let property if the landlord breaches.

## 4. Nominal Damages:

- Awarded when no actual loss is proven (e.g., breach of a trivial term).

## 5. Liquidated Damages vs Penalty:

- Pre-agreed damages are enforceable only if reasonable (Section 74). Excessive amounts are void as penalties.

## (b) Differentiate between Private Company and Limited Liability Partnership. (9 marks)

Basis	Private Company	Limited Liability Partnership (LLP)
Governing Law	Companies Act, 2013	LLP Act, 2008
Liability	Limited to shares	Limited to contribution
Members/Partners	Min 2, Max 200	Min 2, No max
Compliance	High (audits, board meetings)	Moderate (no audit if turnover ≤ ₹50 lakh)
Taxation	Dividend Distribution Tax (DDT) applies	No DDT; taxed as partnership
Management	Directors manage	Partners manage directly
Capital	Minimum paid-up capital required	No minimum capital

**Example:** A tech startup may choose an LLP for flexibility, while a manufacturing firm might prefer a private company for fundraising.